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Using international standards in elections: Council of Europe handbook for civil society organisations

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USING INTERNATIONAL ELECTION STANDARDS



**Council of Europe handbook
for civil society organisations**

**Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**

Funded
by the European Union
and the Council of Europe



COUNCIL OF EUROPE



Implemented
by the Council of Europe

USING INTERNATIONAL ELECTION STANDARDS

Council of Europe handbook
for civil society organisations

Council of Europe

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Foreword

The right to free elections is guaranteed under the European Convention on Human Rights. Of all the democratic safeguards against the abuse of political power, it is one of the most fundamental. The ability of individuals to express their identities and choices peacefully, at the ballot box, is central to stability in any society, and so to Europe's democratic security too.

The tasks performed by election observers are therefore extremely important. Elections must be prepared with diligence and integrity, and observers must perform their duties in an unbiased and transparent manner. Their presence and professionalism helps ensure the confidence of voters, as well as of the international community. The Council of Europe and our partner organisations therefore strive to assist organisations conducting observations to do so to the highest standards.

This handbook draws on methods for electoral assistance developed by our Organisation over many years. It aims to help observers to become more efficient and to produce reports which are more effective. Our starting point is that, far from watching passively from the sidelines, observers play an active role in developing national electoral procedures through their advice and recommendations. It is therefore vital that mission reports and advice issued to national authorities are easily understood and can be translated into concrete action. There are also a number of important principles to which we believe observers should pay special attention during an election, including the participation of women, young people, national minorities and people with disabilities.

This new edition will, I believe, provide organisations engaged in these activities with a practical, useable guide, reflecting decades of relevant experience and supporting them in their invaluable work.

Thorbjørn Jagland

Secretary General of the Council of Europe

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Introduction

ELECTIONS – CORNERSTONE OF DEMOCRACY

The Council of Europe was set up with the aim to achieve greater unity among its members for the purpose of safeguarding the ideals and principles that form the basis of genuine democracy. Since its creation in 1949, a number of legal texts have been adopted with a view to interpreting the notion of “genuine democracy”. Elections, in this respect, are a cornerstone of democratic regimes and therefore a prerequisite for accession to the Council of Europe. This idea is well reflected in the Parliamentary Assembly report titled “For more democratic elections”, prepared by Jean-Charles Gardetto, which cites the Kiev Forum for the Future of Democracy:

The Council of Europe's objective is to establish a common understanding about all the principles which qualify elections as being “free and fair” in compliance with democratic standards. Those standards must be fully implemented in all elections throughout the Council of Europe space and in those States aspiring to join the Organisation or engage in a privileged relationship with it.

Though the existence of democratic institutions as a precondition for joining the Council of Europe is not expressly mentioned in Articles 3 and 4 of the Statute of the Council of Europe, a decision on whether a state can join the Organisation relies on the respect of elementary democratic standards. Failure to respect human rights and democratic principles may entail a suspension of the accession process, as was the case for Belarus, which had special invitee status to the Council of Europe between 1992 and 1997. A general conclusion of the Gardetto report is that commonly accepted democratic principles should apply in each election that takes place in Council of Europe member states or those states that wish to become members or engage in a privileged relationship with the Organisation.

The Council of Europe, through its institutions and bodies such as the European Court of Human Rights, the Parliamentary Assembly, the European Commission for Democracy through Law (Venice Commission) and its Council for Democratic Elections, the Group of States against Corruption and the Division of Electoral Assistance, plays a key role in the creation of Europe's electoral heritage and standards. In turn, civil society organisations (CSOs) contribute to enhancing European standards and good practices by providing vital links between policy, standards and reality. Their role is crucial during election time, and particularly between elections.

CIVIL SOCIETY ORGANISATIONS – WATCHDOGS FOR FREE AND FAIR ELECTIONS

Council of Europe instruments and policies have long provided a solid basis for and significant encouragement to enhancing the roles and responsibilities of CSOs in decision making and actions. In the 2014 Council of Europe report on the state of democracy, human rights and the rule of law in Europe, the Secretary General pointed out that whereas improvements both in electoral legislation and practice have taken place in most member states of the Council of Europe, a number of problems recur in the implementation of the standards of European electoral heritage, as defined in the Venice Commission's Code of Good Practice in Electoral Matters (2002). The report goes on to say that proper election observation makes election violations public and therefore more difficult to accomplish and encourages reciprocal election observation, providing the opportunity for member states to learn from each other. The report also recommended improving the quality of domestic observation of electoral processes.

DOMESTIC ELECTION OBSERVERS CONTRIBUTING TO SUSTAINABLE DEMOCRACIES

Over the last few years, the importance of domestic election observation has grown significantly. Domestic observers cover the entire election process from beginning to end, including the pre-electoral period, election day and the post-election period. They are familiar with local languages and customs, understand the political environment, are able to follow in detail specific election procedures, and are multipliers of electoral values in their societies. Furthermore, observers follow up on election-related cases, come up with action plans for further improvement of the election process and monitor whether key stakeholders take recommendations into consideration between elections. Their observations are vital for the transparency of the electoral process in three ways:

- ▶ gathering information and documenting facts about the election process;
- ▶ assessing the facts/information in order to understand to what degree elections are held in compliance with international standards;
- ▶ engaging in implementation of the recommendations of international election observation missions, thus contributing to the reform process in post-election periods.

Domestic observers are becoming increasingly specialised and professional, and contribute to promoting confidence in the electoral process – and in the long run to the sustainability of democracy. The structure of domestic election observation missions has improved in recent years with strong teams composed of core team analysts, long-term observers and short-term observers, each receiving equal attention in Council of Europe training programmes.

While many domestic observers have become more professional and as a consequence more influential, there is a constant need for upgrading to respond to new trends in the field of elections. These include novel interpretations by the European Court of Human Rights (the Court) of Article 3 on free and fair elections of the Protocol to the European Convention on Human Rights, new electoral standards, and the changing practice of states.

THE HANDBOOK

This handbook, drafted in collaboration with CSOs from the countries of the Eastern Partnership, is a response to the recommendation set out in the 2015 report by the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe, aimed at improving the quality of domestic observation of electoral processes in the member states.

The handbook serves as a reference for domestic observers, primarily for core team members. At the same time, it may serve as a training tool for long-term and short-term observers and other electoral stakeholders who wish to familiarise themselves with international election standards (e.g. government officials, electoral administration, party representatives, judges, lawyers).

The handbook is divided into two parts, providing a brief introduction to the very concept of international standards and then proceeding to their application in election reporting.

The first part, “Election standards and general principles”, presents different types of international standards and commitments as well as international “soft law”, including general principles and good practices in electoral matters and how they relate to each other. The second part, “Application and good practices”, focuses on specific principles of each aspect of the electoral process: starting from election systems and election administrations, continuing with registration of voters and contestants as well as election campaigns and media coverage, covering specific voter categories (e.g. internally displaced persons, refugees, prisoners, minorities, women), and concluding with voting, counting, tabulation and appeal procedures.

The Council of Europe is convinced that this report, “Using international election standards – Council of Europe handbook for civil society organisations”, will further promote uniform application of Europe’s electoral heritage and of other international standards in its member states and beyond.

Part 1

Election standards and general principles

1. DEFINITION

The term “international election standards and good practices” as used in the present handbook encompasses provisions found in different types of documents.

From a geographical point of view two types of standards and good practices can be differentiated:

- international: those of the 1948 United Nations Universal Declaration of Human Rights (UDHR) and the 1966 International Covenant on Civil and Political Rights (ICCPR), including interpretations of the ICCPR by the Human Rights Committee in the form of General Comments.¹ The UDHR is not a treaty, but several of its provisions are universally accepted and considered to be customary international law;
- regional: those of the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) and its additional Protocol 1.

From the perspective of their binding force on states, the standards and practices included in this handbook encompass:

- legally binding treaties (e.g. ICCPR, the Convention);
- soft law, which includes politically binding commitments such as the 1990 Copenhagen Document from the Organization for Security and Co-operation in Europe (OSCE), interpretative documents such as the ICCPR’s General Comment 25, and international good practice such as the Venice Commission’s Code of Good Practice on Electoral Matters (Code of Good Practice) and the OSCE/Office for Democratic Institutions and Human Rights (ODIHR) election monitoring observation reports and their recommendations.

1. The UN Human Rights Committee was established by the ICCPR. The covenant sets out the legal basis of the committee in treaty form, considers it a treaty body and obliges states parties to respect its authority.

The standards and good practices mentioned in this handbook are closely linked to other election-related rights to be found in the documents mentioned above. These include freedom of opinion and expression, freedom of peaceful assembly, freedom of association, freedom of movement, freedom from discrimination, and the right to an effective legal remedy, among others.

Finally, the standards and good practices are consistent with other universal or regional human rights instruments that include specific provisions on the electoral rights of specific groups (e.g. women, minorities, persons with disabilities, internally displaced persons and refugees) and the corresponding election-related obligations of states.²

2. GENERAL PRINCIPLES

The international election standards and good practices mentioned in this handbook stem from the following provisions:

- UDHR, Article 21:
 - (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives
 - ...
 - (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures;
- ICCPR, Article 25:

Every citizen shall have the right and the opportunity, without any ... distinctions ... and without unreasonable restrictions:

 - (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
 - (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
 - (c) To have access, on general terms of equality, to public service in his country;
- the European Convention of Human Rights, Article 3 of Protocol No. 1:

Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature;
- OSCE (formerly CSCE), Copenhagen Document of the Human Dimension of the CSCE (1990), in particular paras. 5 to 8.

The following sections present general questions to be considered when examining the implementation of the main principles³ for democratic elections within the Council of Europe and the OSCE region. It is the implementation of these principles that is monitored by domestic and international election observers.

2. A detailed list of such instruments can be found in the European Commission's 2007 compendium of international standards for elections, available at www.eueom.eu/files/dmfile/compendium-of-int-standards-for-elections_en.pdf, accessed 13 July 2016.

3. A detailed description of the content of these principles can be found in the Venice Commission's Code of Good Practice in Electoral Matters, in particular the Explanatory Report.

a. Universal suffrage

Universal suffrage guarantees all eligible citizens the right to vote and to stand for election and the possibility to exercise these rights. CSOs could consider the following questions:

- is “universal” suffrage interpreted in terms that are as inclusive as possible? It is understood that a specific relationship between the individual and the country in question (e.g. citizenship) may be required;
- the right to vote can be restricted under certain well-defined conditions, usually based on age, nationality, residence and mental capacity. Is this the case?
- which other restrictions to the usual ones based on age, nationality, residence and mental capacity are applied? The fulfilment of formal conditions such as knowledge of a national language or payment of an electoral deposit (to stand in elections) may apply.

The conditions for depriving individuals of the right to stand may be less strict than for disenfranchising them, as it may be legitimate to debar persons whose activities in a public office would violate a greater public interest (Venice Commission 2002: para. 6).

b. Equal suffrage

CSOs could consider the following questions:

- do all electors have the same number of votes, also known as the “one voter-one vote” principle? Is multiple voting effectively prevented in law and practice?
- is the state impartial towards candidates and parties? Does it ensure equality of opportunity? This applies in particular to electoral campaigns, coverage by the media (especially publicly owned media) and to public funding of parties and campaigns;
- are constituency boundaries drawn in such a way that seats in the chambers representing the people are distributed equally among the constituencies, in accordance with defined criteria (which may be the number of residents, the number of registered electors or the number of people actually voting)? In the European electoral tradition, equal suffrage also means equal voting power. The Venice Commission’s Code of Good Practice provides detailed explanations. It should, however, be noted that the right to equal voting power has not, so far, been enforced by the European Court of Human Rights;
- are there any positive measures in place in order to ensure minimum representation for minorities or equality and parity of the sexes? Are they implemented?

c. Free suffrage

Free suffrage comprises free formation of the elector’s opinion and free expression of this opinion. CSOs could consider the following questions:

- do voters have the freedom to form an opinion? Does the state respect the equal opportunity principle, especially in relation to mass media, billposting, the right to demonstrate, and the funding of parties and candidates? Is freedom of expression and, particularly, freedom of political debate respected?

- are voters free to express their wishes? Are voting procedures strictly observed? Is electoral fraud combated? Are voting procedures such as postal voting, proxy voting, mechanical and electronic voting, voting for expatriates, counting and transferring of results organised in accordance with the free suffrage principle? Are the results of the ballot accurately assessed?

d. Secret suffrage

CSOs could consider the following questions:

- are voters protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted?
- are voters protected from any unlawful or arbitrary interference with the voting process?
- are voters respecting the secrecy of suffrage? Is voting individual? Is family voting or any other form of control by one voter over the vote of another prohibited? Are conditions for allowing proxy voting strict enough?

e. Direct suffrage

CSOs could consider the following questions:

- is at least one of the chambers of the national parliament elected through direct universal vote by the people?
- is at least one chamber of the sub-national legislative bodies, or local councils, elected by direct suffrage?

f. Periodic elections

CSOs could consider the following question:

- is the interval between elections usual (four to five years)? A longer interval, though no longer than seven years, may be considered for presidential elections.

3. GENERAL CONDITIONS

States should guarantee general conditions for the conduct of the democratic election process, in particular:

- respect for fundamental rights: this includes respect for the freedom of expression and of the press, freedom of assembly and association for political purposes, freedom of movement inside the country, and the right of nationals to return to their country at any time. Restrictions to fundamental rights must be based in law, taken in the general interest and respect the principle of proportionality;
- stability of electoral law: this covers mainly the stability of the more fundamental rules of electoral law, especially those covering the electoral system per se, the composition of electoral commissions and the drawing of constituency boundaries – three elements that are often regarded as decisive factors in election results. Legislation on such decisive factors should not change just before (less than one year previous to) elections;

- procedural guarantees: this includes the organisation of elections by an impartial body, the observation of elections, an effective system of appeal, the organisation and operation of polling stations, the funding of campaigns and parties, and issues of security (see below, Part 2).

The above-mentioned conditions are not absolute. States have a margin of appreciation when introducing restrictions for the exercise of political rights. This implies that any electoral legislation must be assessed in the light of the political evolution of the country concerned. Features that would be unacceptable in the context of one system may be justified in another. Limitations to states' margin of appreciation could be considered through the following questions:

- do conditions or restrictions imposed respect the free expression of the people in the choice of the legislature? They must reflect (and not run counter to) the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage;
- do conditions or restrictions respect the principle of legality? They should be written in clear terms and should be published in time, ensuring that foreseeability is satisfied;
- do conditions or restrictions pursue a legitimate aim? It is up to the concerned government to explain what the aim is;
- do conditions or restrictions respect the principle of proportionality? As a general rule, individualised measures are to be preferred to large restrictions. With the passing of time, general restrictions on electoral rights become more difficult to justify. Any restriction on electoral rights should not be such as to exclude some persons or groups of persons from participating in the political life of the country.

4. ENFORCEMENT

With regards to the possibilities of judicial enforcement, the international electoral standards and good practices mentioned in this handbook include:

- provisions the judicial enforcement of which can be invoked before national courts (self-executing treaty provisions);⁴
- provisions that can furthermore be enforced internationally (e.g. through the Convention);
- provisions the judicial enforcement of which cannot be directly sought before courts, namely those considered part of soft law.

In Europe, international judicial enforcement is possible only for the Convention (and its protocols). The Strasbourg Court's case law thus plays a fundamental role in interpreting, evaluating and enforcing the implementation of the Convention's electoral obligations (which are quite similar to those found in universal instruments). The last type of provision can nevertheless become binding for a state if and when courts consider them to reflect good practice and include them in a judicial decision. For example,

4. Once a state has signed and ratified a treaty it is legally bound and required to implement it in national law.

several decisions of the Court refer to provisions found in Venice Commission documents, or recommendations and resolutions of the Parliamentary Assembly or the Committee of Ministers, which are often considered to be soft law.

In Council of Europe member states, individuals may file a complaint with the Court to redress election violations, after having exhausted domestic remedies. The Court's decisions contribute to the interpretation of election-related provisions, including in other relevant Council of Europe conventions. The judgments are indicative to all Council of Europe member states, which are encouraged to take them into consideration, but they are binding on the member state that is the subject of the judgment. The adoption of the necessary execution measures is supervised by the Committee of Ministers of the Council of Europe, made up of representatives of the governments of the 47 member states.

Judicial enforcement of the rights derived from the other international documents mentioned above is only possible through national courts. Limited international enforcement is possible for the ICCPR and is provided through the UN Human Rights Committee, the monitoring body. The committee can consider individual complaints on alleged breaches of the ICCPR in respect to any country (including Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine) that has ratified the First Optional Protocol to the ICCPR (ICCPR-OP1) on individual communication procedure.⁵

5. THE APPROACH OF CIVIL SOCIETY ORGANISATIONS

CSOs engaged in election observation activities should refer to international election standards and good practices as benchmarks for evaluating and improving national standards and practices. Reference to international standards is thus closely linked to the monitoring of national standards and practices.

When reporting on elections and making reference to international standards, CSOs need to:

- ▶ be transparent both internally and externally about the benchmarks used;
- ▶ provide adequate training to their members about relevant:
 - national electoral legislation and practice: standards, practices and enforcement possibilities;
 - national obligations at the international level concerning elections, including their enforcement possibilities;
 - international soft law on election issues and options for their implementation.

When observing the implementation of international standards CSOs need to:

- ▶ build knowledge on both national legislation and international standards and good practices in order to properly evaluate national frameworks and practice against international ones and to elaborate recommendations for improving them;

5. The Centre for Civil and Political Rights works to promote the participation of CSOs in the work of the UN Human Rights Committee, available at www.cccprcentre.org/individual-communications, accessed 13 July 2016.

- ▶ build knowledge on monitoring the implementation of standards and practices. This includes building capacities to:
 - assess problems of implementation of international standards and good practices in national regulations and practice and issue recommendations for addressing these problems;
 - follow up on the implementation of recommendations and report on it (including by reporting to the UN Human Rights Committee, as they are encouraged to do).
- ▶ build knowledge of judicial enforcement possibilities, both of national legislation and of international standards and practices. CSOs may consider:
 - bringing a case for judicial enforcement before the national courts;
 - initiating activities to bring a case for judicial enforcement before the Court (after exhausting national remedies).

Part 2

Application and good practices

1. ELECTORAL SYSTEM

The electoral system plays a fundamental role as it provides a frame, setting the procedural rules for the casting of votes and their translation into seats won by parties and candidates. It thus determines the relationship between the electorate and the elected institutions. This part of the handbook deals with the basic characteristics of an electoral system such as the choice of the electoral system by a state as well as the existing elements and types. The emphasis lies in the two last sub-sections, which deal in more detail with the non-discriminatory character and the conditions of the legal framework regulating the type of electoral system.

a. Choice of electoral system

International law does not prescribe any electoral system (UN Human Rights Committee 1981-2014: General Comment (GC) 25, para. 21). It rather recognises that there is no electoral system equally suited to all states. A country's choice of electoral system should be respected as a matter for national determination (Venice Commission 2002: Guidelines, section II.4). Each electoral system has its own distinct peculiarities, depending on the political and historical context of the country it is applied in (Venice Commission 2010).



Wide margin of appreciation by states (the Court's case law)

Facts: the case *Saccomanno and Others v. Italy* concerned in particular the closed list system. The applicants complained that they had not been able to express their preference for a candidate in the parliamentary elections since Italian law did not permit the direct election of representatives by voters (it prescribes the submission by political parties of "closed" candidate lists: the order of candidates elected on a list is established by the party itself and voters cannot express their preference for any particular candidate).

Decision on the admissibility: considering the "wide margin of appreciation enjoyed by the States in this regard and the need to assess electoral legislation as a whole in the light of political developments and on the basis of the country's historical and political context", the Court held that the closed list system had not been in breach of Article 3 of Protocol No. 1 (right to free elections).

Source: *Saccomanno and Others v. Italy* (13 March 2012).

[http://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-62855\"\]}](http://hudoc.echr.coe.int/eng#{\)

The European Court of Human Rights gives a wide margin of appreciation to the state in dealing with this issue, as reflected in its ruling concerning the case *Saccomanno and Others v. Italy* of 13 March 2012.

The electoral system must guarantee the free expression of the will of the electors (UN Human Rights Committee 1981-2014: GC 25, para. 21). An electoral system should also encourage political pluralism, and consider the interests of marginalised groups (OSCE/ODIHR 2003a: para. 2.4). Additionally, it should strive for universal representation in elected bodies and support direct elections (at least for one chamber of the national legislative body) (International IDEA 2014a: 71). To sum up, an electoral system must conform to human rights standards (Venice Commission 2002: Guidelines, section II.1.a) and voting principles, as stated in the first part of this handbook.

Most notably, equal suffrage must be granted, best described via the principle "one person, one vote" (European Commission 2008: 32). Where there are electoral systems in which the elector has more than one vote this means that all electors should have the same number of votes (Venice Commission 2002: Explanatory Report, para. 12). In addition, equal suffrage comprises as accurately as possible an equal weight of votes (The Carter Center 2014: 19).

b. Elements of the electoral systems

Electoral systems are defined as "the set of procedural rules governing the expression of votes cast in a given election and their conversion into seats" (Venice Commission 2013: 159). Two main categories determining electoral systems can be distinguished.

The first category establishes aspects concerning the organisation and conduct of elections such as the type of suffrage (direct, indirect, multi-tiered elections); the guiding principle the vote is based upon (is a majoritarian, proportional or mixed system applied?); the ballot structure (does the voter vote for a candidate or a party list?

Does the voter make a single choice or is s/he expressing a series of preferences?); and the electorate's division among constituencies/electoral districts (how many voters live in a district?).

The second category entails provisions for the translation of votes counted into seats gained by a candidate or party. This comprises the electoral formula (what mathematical formula is used to calculate the seat distribution and allocation? How are thresholds determined? How are the seats distributed among constituencies/among various lists/within lists?).

c. Types of electoral systems

According to how proportionately they translate votes cast by voters into seats won by parties, electoral systems are often divided into three main types (International IDEA 2014a: 70), though there is a virtually unlimited number of voting methods within these major types:

- majoritarian systems typically prioritise local representation via the use of small, single-member electoral districts (one seat per constituency). In order to win, a candidate must either reach a simple majority (most votes cast in his or her favour) or an absolute majority (more than 50% of the votes cast) (European Commission 2008: 31);
- proportional systems typically use larger multi-member districts (more than one seat per electoral district). Seats are distributed proportionally according to electoral formulae (ibid.) (divisor methods enabling seats allocation in one operation, e.g. the D'Hondt method or the Saint-Laguë method; divisor methods for seats allocation in two stages, e.g. the Droop quota, Hagenbach-Bischoff quota or the Hare quota (first stage) and the largest remainder method, strongest lists method or the highest average method (second stage for distribution of the remaining seats));
- mixed systems offer yet other approaches, as well as various combinations of majoritarian and proportional models (such as electing one part of the legislature by a proportional model and another from local districts).

d. Non-discriminatory legal framework

The legal framework should be non-discriminatory (The Carter Center 2014: 60), which means it should avoid interference with the voting principle of equal suffrage and the above-mentioned standard of universal representation. This is most significant in the fields of boundary delimitation, the setting of thresholds and the establishing of special measures.

Boundary delimitation

Boundary delimitation is necessary where elections are being held in more than one single constituency (Venice Commission 2002: Explanatory Report, para. 13). While single-member districts should be of the same size to guarantee the equal weight of all votes, in multi-member districts the number of representatives per constituency should be

decided in accordance with a specific criterion or a combination of several criteria such as the number of residents in the constituency, the number of resident nationals (including minors), the number of registered electors or possibly the number of people actually voting.

Hence, seats must be distributed in a clear and balanced way among the constituencies. This should apply at least for national elections to lower houses of parliaments as well as regional and local elections. To draw boundaries the following allocation criteria can be applied: the size of the population, the number of residents, or the number of voters registered or (potentially) actually voting. The combination of these criteria is admissible. Boundaries can be further oriented towards geographical criteria, administrative boundaries or even historical boundaries (ibid.: Guidelines, section I.2.2). It is essential to avoid so-called “gerrymandering” – the drawing of electoral boundaries undertaken in such a way that certain more homogenous segments of the electorate are intentionally combined or divided to influence the outcome of an election. Groups with special interests should be considered in an appropriate way, like national minorities, and should have a chance to gain a seat in a majoritarian system (OSCE 1999b Recommendations No. 9 and No. 10).

The Final Report of the OSCE/ODIHR Election Observation Mission to 2014’s Early Parliamentary Elections in Ukraine brought up such an example (below).

According to the Venice Commission’s Code of Good Practice (2002), variances among constituencies or representatives and the number of voters should not be more than 10% from the average. They must not exceed 15% except where special circumstances exist like the protection of a locally concentrated minority or a thinly populated administrative



Observation of boundary delimitation and national minorities (Ukraine)

Drawing the boundaries of single-mandate electoral districts should take into account the geographical distribution of national minorities. During the 2014 early parliamentary elections in Ukraine OSCE/ODIHR observers noted:

“Some national minority representatives also informed the OSCE/ODIHR EOM that they consider themselves to have been disadvantaged in majoritarian contests. While Article 18 of the election law was amended in 2013 to incorporate recommendations that ethnic composition be taken into account when drawing the boundaries of single-mandate electoral districts, constituency boundaries were not redrawn before these elections. This prompted official protests from the Hungarian and Romanian minorities that the delimitation of electoral districts from 2012 in Zakarpattya and Chernivtsi oblasts respectively, would again prevent them from securing a majoritarian MP.”

The Mission therefore recommended that “if the current electoral system is retained, the CEC [central electoral commission] should complete the implementation of Article 18 of the election law regarding the delineation of single-mandate electoral districts well in advance of the next election cycle, and in full consultation with national minorities.”

Source: OSCE/ODIHR EOM to Ukraine, Early Parliamentary Elections 2014, Final Report, p. 22

www.osce.org/odihr/elections/ukraine/132556?download=true

unit. Further, in order to ensure equal voting power, boundaries should be reviewed at least every 10 years. Multi-member constituencies should have boundaries that coincide with administrative boundaries. In case of variances in multi-member constituencies, the number of representatives for one constituency should be redefined.

Boundary delimitation should take place in a transparent and consistent manner, established by a law that also regulates the frequency of reviewing boundaries (European Commission 2008: 32). It should underlie independent inquiry by CSOs, candidates, political parties or other electoral stakeholders and allocation criteria should be publicly available (The Carter Center 2014: 59).

Thresholds

An electoral system can legally impose minimum thresholds that parties or candidates must reach in order to win a seat. However, unreasonably high thresholds may prevent parties from being elected (European Commission 2008: 32). This must not be done intentionally to exclude specific political parties or national minorities from representation. Moreover, high thresholds result in so-called “wasted votes”, which means that these voters’ choices are not considered.

The Court, in its judgment *Yumak and Sadak v. Turkey* of 8 July 2008, considered whether the threshold in the Turkish parliamentary elections is too high.



Electoral thresholds (the Court’s case law)

Facts: the applicants alleged that the electoral threshold of 10% imposed nationally for parliamentary elections had interfered with the free expression of the opinion of the people in the choice of legislature (Turkish electoral law stipulated that to have representatives in parliament, a political party had to obtain at least 10% of votes nationally).

Law: the Court considered that in general a 10% electoral threshold appeared excessive, as such a threshold compelled political parties to make use of stratagems that did not contribute to the transparency of the electoral process: “In the present case, however, the Court is not persuaded that, when assessed in the light of the specific political context of the elections in question, and attended as it is by correctives and other safeguards which have limited its effects in practice, the threshold has had the effect of impairing in their essence the rights secured to the applicants by Article 3 of Protocol No. 1.” In detail, the Court identified the occurrence of protest votes due to previous economic and political crises in Turkey that penalised former governing parties in the 2002 election. Correctives and safeguards exist in Turkey, for instance pre-electoral alliances of parties to overcome the threshold. These parties split up after being elected, or parties support independent candidates for whom the threshold does not apply. Additionally, the Turkish Constitution contains the principle of fair representation, which according to the Constitutional Court of Turkey has to be balanced with the aim to create stable governments. Thus, the Constitutional Court functions as a supervisory authority.

Conclusion: no violation of Article 3 of Protocol No. 1 (right to free elections).

Source: *Yumak and Sadak v. Turkey* (8 July 2008).

[http://hudoc.echr.coe.int/eng?i=001-87363#{"itemid":\["001-87363"\]}](http://hudoc.echr.coe.int/eng?i=001-87363#{)

Special measures

Electoral law can include measures seeking to address traditionally existing imbalances in universal representation ((European Commission 2008). In principle, such measures do not go against the principle of equal suffrage (Venice Commission 2002: Guidelines, sections I.2.4.b, I.2.5). Those special measures may comprise quotas, reserved seats for specific groups, exemptions from quorum requirements or lower thresholds.

First of all, such measures should apply to women so as to enhance their participation in decision making in elected bodies and to achieve equal participation of men and women (Council of Europe 2013a: Strategic objective 4). Further, the Council of Europe's Committee of Ministers in its Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making recommends that governments of member states:

- promote balanced participation, meaning that representation of either women or men in any decision-making body in political life should not fall below 40%;
- promote the equal civil and political rights of women and men, including those running for office;
- promote and encourage special measures to stimulate and support women to participate in political decision making;
- consider setting targets, with a timescale for delivery to reach balanced participation of women and men;
- monitor and evaluate progress and report regularly on measures taken and progress made.

The ability of women to exercise their human rights and to participate fully in the electoral process depends on the social and cultural norms that exist in the country. In countries where women are generally unequal in everyday life they will be at a disadvantage in political participation as well. This may be particularly true for women from minority populations; those living in rural areas; victims of violence and/or human trafficking; and those who have been internally displaced.

This is why election observers will need to make an assessment not just of how the national legislation meets international standards but also of the reality of life for women. This may include assessing education, health care, employment opportunities and the justice system, as well as levels of violence, human trafficking and women's economic independence.

Election reports should include information on:

- ▶ the number of women and men elected at parliamentary, regional and local level;
- ▶ the number of women and men elected by each political party;
- ▶ the success rate of women and men as candidates in getting elected.

This information, monitored over time at each election, can provide a measure of progress and indicate the success of any specific measures adopted.

Some states have introduced such measures as have been described above for national minorities. Additionally, states must permit parties representing national minorities (Venice Commission 2002: Guidelines, section I.2.4). Special measures can also apply for



Discriminatory practice of reserved seats (the Court's case law)

Facts: the applicants, who were both citizens of Bosnia and Herzegovina, were of Roma and Jewish origin respectively, and held prominent public positions. The 1995 Constitution of Bosnia and Herzegovina included power-sharing provisions that provided – as a result of the peace negotiations after the Bosnian War to ensure peace – that the tripartite State Presidency and seats in the upper chamber of the State Parliament, the House of Peoples, be reserved for Bosniacs, Croats and Serbs only. The applicants complained that, despite possessing experience comparable to the highest elected officials in the country, they were prevented by the constitution from being candidates for such posts solely on the grounds of their ethnic origin.

Law: the Court reiterated that “discrimination means treating differently, without an objective and reasonable justification, persons in similar situations. ‘No objective and reasonable justification’ means that the distinction in issue does not pursue a ‘legitimate aim’ or that there is not a ‘reasonable relationship of proportionality between the means employed and the aim sought to be realised’ ... Ethnicity and race are related concepts. ... Discrimination on account of a person's ethnic origin is a form of racial discrimination. ... the maintenance of the system in any event does not satisfy the requirement of proportionality. ... there exist mechanisms of power-sharing which do not automatically lead to the total exclusion of representatives of the other communities. ... Thus, the Court concludes that the applicants’ continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina lacks an objective and reasonable justification”.

Conclusion: violation of Article 14 (prohibition of discrimination) in conjunction with Article 3 of Protocol No. 1 (right to free elections) and violation of Article 1 of Protocol No. 12 (general ban on discrimination).

Source: *Sejdić and Finci v. Bosnia and Herzegovina* (22 December 2009).

[http://hudoc.echr.coe.int/eng?i=001-96491#{"itemid":\["001-96491"\]}](http://hudoc.echr.coe.int/eng?i=001-96491#{)

people with special needs (such as people with disabilities) (The Carter Center 2014: 62). In the latter case their introduction should be subject to scrutiny to ensure that they do not lead to inequality.

It is important to note that under international law, such measures are not prohibited by the principle of non-discrimination themselves provided that there is an objective and reasonable justification for their application (proportionality principle) and that the measures do not run counter to other guaranteed human rights. Thus, special measures could be inadmissible if they themselves appear discriminatory.

This can be exemplified by the ruling of the European Court of Human Rights in the case of *Sejdić and Finci v. Bosnia and Herzegovina* of 22 December 2009.

e. Conditions of electoral law

The legislative framework for elections must be clear, unambiguous, detailed (yet not overly complex) and established by statutory law in order to provide certainty and predictability (OSCE/ODIHR 2003a: para. 2.5; European Commission 2008: 30). It has to be equally enforced and non-arbitrarily applied (The Carter Center 2014: 56). Voters and stakeholders can thereby understand the electoral system and their role in the elections, which creates public confidence in the process.



Clarity of electoral law (the Court's case law)

Facts: the applicant stood as a candidate in the 2000 parliamentary elections for the seat reserved for Romania's Italian minority. He was nominated as a candidate for one of the organisations representing the Italian minority, which, after the votes had been counted, was allocated the parliamentary seat, having gained a total of 21 263 votes at the national level. The organisation presented the applicant's uninominal list in 19 of the country's 42 constituencies. He was the candidate, having secured the largest number of votes at national level (5 624 votes). However, the seat was allocated to another candidate belonging to that organisation, who had stood on another uninominal list and had won only 2 943 votes, but in a single constituency. The applicant's appeals to the Central Electoral Office and to the national courts were rejected on the grounds that seats were allocated on the basis, *inter alia*, of the order of the candidates on the organisation's winning list.

Law: the Court observed that the election law does not set out clearly the procedure to be followed in assigning the parliamentary seat set aside for the winning organisation representing a national minority. When referring to the largest number of votes, its text does not specify whether this is the largest number of votes at national level or at constituency level. However, such a detail may prove decisive when determining the winning candidate. The Court considered that "the lack of clarity of the electoral law as regards national minorities and the lack of sufficient guarantees as to the impartiality of the bodies responsible for examining the applicant's challenges impaired the very essence of the rights guaranteed by Article 3 of Protocol No. 1..."

Conclusion: violation of Article 3 of Protocol No. 1 (right to free elections).

Source: *Grosaru v. Romania* (2 March 2010).

[http://hudoc.echr.coe.int/eng?i=001-97617#{"itemid":\["001-97617"\]}](http://hudoc.echr.coe.int/eng?i=001-97617#{)

The absence of such conditions can be legally challenged, as reflected in the ruling by the Court in the case *Grosaru v. Romania* of 2 March 2010.

Amendments to the law concerning the electoral system itself or boundary delimitation may not be made less than one year before an election (Venice Commission 2002: Guidelines, section II.2.b). This ensures that all electoral stakeholders are able to fulfil their role (OSCE/ODIHR 2003a: para. 2.5). Exceptions may apply if serious deficiencies in the electoral law or its application have occurred and if there is public consensus that those have to be corrected (*ibid.*; Venice Commission 2005). Amendments made shortly before elections are acceptable if a rule states that such amendments will not apply to the next election but will enter into force afterwards (Venice Commission 2002: Explanatory Report, para. 66).

	Electoral system (standards and good practice)	OSCE/ODIHR EOM Reference (final reports)
Choice	Any electoral system should provide each person with the same number of votes and ensure equal weight of votes (equal suffrage).	Georgia 2012, p. 6
Boundary delimitation	Boundary delimitation has to be carried out by an independent and impartial body.	Ukraine 2012, p. 7
	Boundaries have to be drawn on the basis of admissible criteria set in advance to avoid discrimination (gerrymandering).	Ukraine 2012, p. 7 Ukraine Oct. 2014, p. 22
	To guarantee equal voting power variances occurring between the number of voters and constituencies or representatives should not exceed 10% from the average. To avoid such deviations a review of boundaries should take place at least every 10 years.	Belarus 2012, p. 5 Georgia 2012, p. 6
Thresholds	Thresholds should not be set too high with the intention of excluding specific political parties, denying national minorities representation or causing wasted votes.	Moldova 2014, p. 6, 18
Special measures	Such measures aiming to increase representation of underrepresented groups are not in principle opposed to equal suffrage.	Moldova 2011, p. 20 Moldova 2014, p. 18 Ukraine Oct. 2014, p. 15
	A clear, detailed and accessible framework for elections has to be created by statutory law and implemented according to the rule of law.	Armenia 2013, p. 5 Moldova 2015, p. 5
Legal framework	Framework and amendments should be the result of an inclusive and consultative process.	Armenia 2013, p. 6 Ukraine Oct. 2014, p. 23
	Amendments to the fundamental elements of electoral law (e.g. electoral system, boundary delimitation) may not be made less than one year before an election.	Georgia 2012, p. 7 Ukraine Oct. 2014, p. 23 Moldova 2015, p. 4

2. ELECTORAL ADMINISTRATION

A state's electoral administration (EA) is responsible for the conduct of elections as well as for ensuring the participation of voters and the integrity of the whole electoral process. It consists of several levels, from the national EA with the central electoral commission (CEC) down to district or territorial electoral commissions and the polling station commission. The EA's primary duties are determining who is eligible to vote, candidate registration, polling operations, and the counting and tabulating of votes. Additional tasks of the EA might be voter education, boundary delimitation or the settling of electoral disputes. States have a margin of appreciation in deciding which concrete tasks they allocate to the EA.

Aspects of independence, impartiality and permanence are specified under sub-section a., requirements for the formation of electoral management bodies (EMBs) are described in sub-section b. and good practices for EMBs are described in sub-section c.

a. Features of the electoral administration

An independent EA, which operates in a professional and impartial manner, is a key requirement for genuine elections: "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant" (UN Human Rights Committee 1981-2014: GC 25, para. 20).

However, the criteria of independence does not necessarily entail a separate institution established constitutionally and exclusively for elections (International IDEA 2006: paras. 15-22). In many member states of the Council of Europe the management of elections is entrusted to existing institutions, which are part of the government. Rather, independence means the EA should be independent from political interests (The Carter Center 2014: 69).

An example can be found in the OSCE/ODIHR Election Observation Mission's Final Report on the 2012 Parliamentary Elections in Belarus.



Independence of electoral administration (Belarus)

The EOM, in its Final Report, reviewed structure and appointment procedures for the election administration, and assessed that the "role of the President in appointing senior election officials challenges the autonomy of the election administration. The current CEC Chairperson has held the position since 1996. During these elections, the Chairperson appeared regularly on television and presented her political views about the electoral process and its contestants, which brought into question the impartiality of the commission's work. All parties and candidates, except those represented in parliament, expressed a lack of confidence in the impartiality of the election administration."

The OSCE/ODIHR EOM, in this regard, recommended: "The role of the President in appointing senior election officials to the Central Election Commission could be reconsidered so as to increase confidence in its independence and its impartial application of the Electoral Code."

Source: OSCE/ODIHR EOM to Belarus, Parliamentary Elections 2012, Final Report, p. 6.

www.osce.org/odihr/98146?download=true

Accordingly, the EMB should be administered separately from governmental institutions where the administrative authorities' independence from political stakeholders has not been established over the course of time (Venice Commission 2002: Guidelines, section II.3.1.b).

The independence of the EA should be legally guaranteed in a clear way (European Commission 2008: 37). Furthermore, EMB members must be able to act free from intimidation or threat to their safety (The Carter Center 2014: 75). The UN Human Rights Council (2012) adds that independence implies a separate budget determined by parliament that provides sufficient funding.

According to the Code of Good Practice, EMBs should be set up as permanent bodies (Venice Commission 2002: Guidelines, section II. 3.1.c). Where the EMB is established temporarily for the electoral period, it must be set up in a timely manner to implement the election procedure while preserving institutional memory across electoral cycles (European Commission 2008: 37; International IDEA 2006: para. 28).

b. Composition of EMBs

Concerning the recruitment of the EMB, states must put into place a transparent, efficient and equitable procedure (UN 2003: Article 7 (1)(a)). In addition, "to ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable" (UN Human Rights Committee 1981-2014: GC 25, para. 23).

The official appointing body may be part of the executive, judiciary or parliament. The method for appointment should be laid out in the election legislation (OSCE/ODIHR 2003b: 66). Otherwise, these bodies could unreasonably influence the composition of EMBs through the repeated rejection of nominees or their arbitrary removal.

The Code of Good Practice has specific requirements for the composition of central electoral commissions. They should include:

- i. at least one member of the judiciary;
- ii. representatives of parties already in parliament or having scored at least a given percentage of the vote; these persons must be qualified in electoral matters (Venice Commission 2002: Guidelines, section II.3.1.d).

Members should also be prohibited from campaigning, and political parties must be equally represented (either strictly or proportionally according to previous election results).

The latter requirement can be visualised in the Final Report of the OSCE/ODIHR Election Observation Mission to the 2013 Presidential Elections in Azerbaijan.

States can implement measures to increase the representation of marginalised groups in EMBs. Such special and temporary measures are reasonable for people with disabilities and national minorities (International IDEA 1996: para. 6). However, it must be ensured that no inequality among groups arises as a result (The Carter Center 2014: 74). The same procedure should apply to achieve *de facto* equality of women (UN 1979: GR 23, para. 15). At least 40% of EMB staff should represent the underrepresented sex (Committee of Ministers 2003a: Appendix).



Impartiality in the composition of the Election Administration (Azerbaijan)

The OSCE/ODIHR EOM found that the set-up for election administration in the country undermines confidence in elections. Since “by law, chairpersons of all commissions are nominees of the parliamentary majority while secretaries represent the parliamentary minority and the independent deputies. The parliamentary majority therefore holds a de facto decision-making majority in all election commissions.”

Based on that, the EOM recommended: “The Election Code should be amended through an inclusive process to revise the composition of election commissions at all levels, with the aim of enhancing impartiality and public confidence in the work of the election administration.”

Source: OSCE/ODIHR EOM to Azerbaijan, Presidential Election 2013, Final Report, p. 7.

www.osce.org/institutions/110015?download=true

States should actively promote balanced participation on each level of the EMB as recommended in the Final Report by the OSCE/ODIHR Election Observation Mission to the 2010 Parliamentary Elections in Azerbaijan.

EMB staff members should be politically neutral and must possess specialised skills regarding elections in order to enable the EMB to organise them (Venice Commission 2002: Explanatory Report, para. 83). Members of electoral commissions at all levels of the EA must receive standardised training. This comprises training on the electoral process, international obligations and human rights standards.

To avoid influence by party interests the composition of EMBs should be regulated in the constitution or at least at a level higher than ordinary law (The Carter Center 2014: 70). Amendments should not be admissible less than one year before an election (Venice Commission 2002: Explanatory Report, paras. 65-6).

Last but not least, appointing bodies should not be free to recall the appointment of an EMB member, to ensure the independence of the body (*ibid.*: para. 77). EMB staff should be appointed for a reasonable time that should be longer than the term of office of the government. Thus, reappointment does not depend on each government or majority interests (European Commission 2008: 37). Moreover, other arbitrary measures to exert pressure on EMB staff members should be avoided, such as cutting salaries for inconvenient decisions (International IDEA 2006: 99).



Representation of women in the electoral administration (Azerbaijan)

During the 2010 Parliamentary Elections in Azerbaijan the OSCE/ODIHR EOM noted that women were underrepresented at the top level of the EA although their representation had increased at the lower levels of the administration.

Based on that, the OSCE/ODIHR EOM recommended: “Parliament and state authorities should create the necessary conditions to promote and facilitate the inclusion of women in top government posts and in the higher levels of the election administration.”

Source: OSCE/ODIHR EOM to Azerbaijan, Parliamentary Elections 2010, Final Report, p. 27.

www.osce.org/odihr/elections/azerbaijan/75073?download=true

c. Mode of operation of EMBs

States are required to ensure transparency in the electoral process. This includes transparency of the EA while fulfilling its tasks, especially its decision-making process, legislation process and operational procedures for the organisation of electoral events. For instance, the deadline of various procedures must be published so that it is possible to build an electoral calendar. The electoral information must be appropriately published to secure public understanding. In addition, meetings of the electoral administration should be open (also to media and party representatives) and tenders should be public and competitive (The Carter Center 2014: 71). Key principles guiding transparency are the right to information and the rule of law. Thus the EA has to act in conformity with law.

Furthermore, the EA has to act impartially to build public confidence in the body. To ensure impartiality and debate between the majority and at least parts of the minority, decisions of the electoral commission should require consensus or at least a qualified majority (e.g. two thirds) (Venice Commission 2002: Explanatory Report, para. 80).

The authority of EMBs should be recognised by key stakeholders (The Carter Center 2014: 67). Additionally, the law should include an article requiring state authorities to respond to the requirements of the EA (Venice Commission 2002: Explanatory Report, para. 85).

	Electoral administration (standards and good practice)	OSCE/ODIHR EOM Reference (final reports)
Independence and impartiality	The EA should be independent from political interests.	Belarus 2012, p. 6 Ukraine Oct. 2014, p. 10
	EMB staff members must be able to act free from intimidation or threats to their safety.	Ukraine May 2014, p. 12
	The EA should have its own (sufficient) budget and other resources.	Moldova 2011, p. 6 Ukraine Oct. 2014, p. 9
Formation	The government should have a limited role in the formation of an independent EA.	Belarus 2012, p. 6
	The appointment of the polling officials should be inclusive and impartial.	Belarus 2012, p. 7 Azerbaijan 2013, p. 7
	Criteria for the appointment of election officials should be clear and objective.	Belarus 2012, p. 7
	EMB members should not run as candidates.	Moldova 2011, p. 6
	Special measures can be taken to boost female representation in electoral commissions.	Azerbaijan 2013, p. 8
Training	Standardised training should be provided for EMB members.	Georgia 2013, p. 7 Ukraine May 2014, p. 11
	Training for polling officials should be equally provided to all officials.	Belarus 2012, p. 6
	The training of the EA should emphasise transparency.	Belarus 2012, p. 7
Mode of operation	Electoral commissions should work transparently, especially by holding open meetings, and ensure that the decision-making process is inclusive.	Armenia 2012, p. 6 Belarus 2012, p. 6 Georgia 2013, p. 6 Ukraine Oct. 2014, p. 9
	All decisions should be made public in a timely manner.	Belarus 2012, p. 6 Azerbaijan 2013, p. 7
	Members of the electoral commissions should receive information and material in a timely manner.	Azerbaijan 2013, p. 7 Moldova 2015, p. 6

3. VOTER EDUCATION

Free suffrage ensures the freedom of voters to form an opinion. Voter education in this context should enable voters to vote by providing information on the electoral process. Information increases not only understanding but also the confidence of voters in the entire electoral process and enables the electorate to make an informed choice. The assessment of voter education campaigns is important in understanding the different problems that might occur, for instance during voter registration or on election day itself.

The content of voter education, its target groups and providers are examined in sub-section a. Sub-section b. refers to measures for groups with special needs.

a. Contents, targets and providers

Voter education should offer impartial and basic information about elections such as the logistics of registration, lists and the candidates standing for election (Venice Commission 2002: Guidelines, section I.3.1.b) or voting itself, as well as broader civic education. It should also raise citizens' awareness of their democratic rights and fundamental freedoms (The Carter Center 2014: 96). Additionally, voter education should promote the principles of the rule of law and must not be discriminatory. It should include, in particular, information on the voting principles of universal, equal and secret suffrage, and information on the right to an effective remedy (ibid.: 99). Voters must be informed about these rights in advance, and during and after election day, whereas restrictions on rights have to be communicated well in advance of election day (ibid.: 98).

Voter education can consist of awareness-raising campaigns, trainings and other informative offers. Programmes of voter information/education can be conducted through state-owned or public media, as well as other means. It has become part of good practice that in countries with state-owned media, these channels deliver voter education programmes. Elections have to be scheduled in a way to allow sufficient time for a broad voter education programme (OHCHR 1994: 75). Education material has to be distributed in a timely manner.

Information must be available to all groups of society and has to be responsive to the needs of the entire electorate (The Carter Center 2014: 96, 98). However, it should in particular target groups that have been less active in previous elections and first-time voters.

The Code of Good Practice mentions public authorities as having certain positive obligations in respect of voter information (Venice Commission 2002: Guidelines, section I.3.1.b.). Since the EA is primarily responsible for the conduct of elections and possesses certain competences in this field, it should provide voter education. This is especially preferable in developing democracies to increase the confidence of voters in the impartiality of the EA and to make sure governments are financing such programmes (International IDEA 2006: para. 107). In case of non-permanent EAs, measures should be taken to preserve the institutional knowledge on elections. However, voter education should not be offered solely by the EA. States should also permit political parties, candidates and CSOs to act in this field (ibid.: para. 108).

b. Measures for groups with specific needs

Steps should be taken to ensure *de facto* equality of men and women, for example through campaigns addressing women and their individual voting rights (The Carter Center 2014: 102). Such measures should not be considered discriminatory.

Further, programmes should promote equal treatment of people with disabilities. The public authorities must ensure that the information provided is available and accessible, to the greatest extent possible and taking due account of the principle of reasonable accommodation in all necessary alternative formats, bearing in mind the restriction of proportionality, legal regulations and realistic feasibility. Such “[p]ositive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movements which prevent persons entitled to vote from exercising their rights effectively” (UN Human Rights Committee 1981-2014: GC 25, para. 12). Further, locations and information should be accessible for people with disabilities (UN 2006: Article 9). The information provided should be easy to read and to understand.

In areas where there is a significant national minority, voter education programmes should also be conducted in the language of the minority group (OSCE/ODIHR 2003b: 97).

An example good practice that meets international standards both for national minorities and rights of persons with disabilities was observed during the 2013 Presidential Election in Georgia.



Voter education campaigns for people with disabilities and national minorities (Georgia)

The EOM assessed that “[a] CEC voter information campaign with messages on different electoral aspects was broadcast on public and private media, including television (TV) information spots broadcast in minority languages and sign language”.

Further, it noted that “For this election, the CEC established a special working group on ethnic minority issues, organized meetings with national minority representatives, and visited minority regions. The CEC provided grants to support civic integration and increase national minority participation in the election process. It also carried out trainings, awareness-raising, and voter education projects in co-operation with several minority NGOs in minority languages and areas. ... In addition to the state language, the CEC provided election-related documents in Armenian and Azeri. The CEC webpage also provided information in the Abkhaz language. During the election period, the CEC operated a hotline in minority languages.”

Source: OSCE/ODIHR EOM to Georgia, Presidential Election 2013, Final Report, p. 7, 19.

www.osce.org/odihr/elections/110301?download=true

The conflict in eastern Ukraine since February 2014 has also raised the importance of voter education and awareness-raising campaigns targeting internally displaced persons (IDPs).

Following the principles of the European electoral heritage, the special needs of IDPs should be addressed by voter education. This is highlighted in the Final Report of the OSCE/ODIHR Election Observation Mission to the 2014 Early Parliamentary Elections in Ukraine.



Information campaign focusing on special needs of IDPs (Ukraine)

On 7 October (19 days before election day), the CEC in Ukraine changed the electoral law and adopted a simplified procedure permitting voters to change their voting address temporarily. This measure should enable, *inter alia*, IDPs to participate in the elections.

The Mission assessed that “[o]verall, and similar to the presidential election in May 2014, voter information and education in these elections proved to be insufficient. Voter education spots on national broadcast media were almost absent. In this respect, a targeted nationwide voter information or awareness campaign to inform and improve the understanding of hundreds of thousands of IDPs regarding the simplified procedure for registration could have contributed to an increased number of registration and participation of IDPs”.

Based on these findings, the Mission recommended that “for future elections, serious consideration could be given to adopting an effective voter-information and education strategy and to carrying out a voter-information campaign focused, among others, on awareness-raising for IDPs”.

Source: OSCE/ODIHR EOM to Ukraine, Early Parliamentary Elections 2014, Final Report, p. 13.

www.osce.org/odihr/elections/ukraine/132556?download=true

	Voter education (standards and good practice)	OSCE/ODIHR EOM Reference (final reports)
Content, target groups, means	The authorities should provide basic information about elections and conduct broader civic education programmes.	Moldova 2011, p. 7 Moldova, 2014, p. 7, 27 Ukraine Oct. 2014, p. 13
	Authorities are obliged to announce all received candidatures as well as inform voters appropriately about lists and the candidates standing.	Moldova 2011, p. 9, 24 Ukraine 2012, p. 8 Moldova 2014, p. 12 Moldova 2015, p. 10
	Voter education specifically targeting gender equality and the needs of national minorities is reasonable and admissible.	Moldova 2011, p. 21, 26 Armenia 2012, p. 21
Providers	Voter education may be provided by the EA, CSOs, political parties, candidates, etc.	Moldova 2014, p. 7
Special measures	In areas where there is a significant minority, such programmes should also be conducted in the language of the minority group.	Ukraine 2012, p. 23, 37 Georgia 2013, p. 19
	Voter education should be adjusted to the special needs of people with disabilities.	Georgia 2013, p. 7

4. VOTER REGISTRATION

The principle of universal suffrage requires that the electoral process be organised in the most inclusive manner possible. As a general rule only registered people are allowed to vote, therefore effective voter registration is important to ensure the right to vote to as many people as possible. However, there have to be protective measures to avoid the abuse of the right to vote (e.g. by ineligible people or multiple voting).

Voter registration includes the eligibility of voters and restrictions to this; the registration process and the voter register; and measures for groups with special needs.

a. Voter eligibility

Legal criteria for the eligibility of voters formalise the key civil and political right – the right to vote and to elect government. Although recognised as an inherent human right, the right to vote is not an absolute right (UN Human Rights Committee 1981-2014: GC 25, para. 10). Virtually all instruments of international law allow for some restrictions. However, these restrictions cannot be arbitrary, that is there has to be a legitimate aim and respect for the principle of proportionality. Hence, restrictions must be objective and reasonable (OHCHR 1966: Article 25; UN Human Rights Committee 1981-2014: GC 25, para. 10). Furthermore, international law instruments agree that the circumstances and the degree of restrictions must be defined in the primary legislation of the state.

The Code of Good Practice provides useful guidance for restrictions:

- ▶ a minimum age is required (at the latest, the age of majority, and not later than the age of 25);
- ▶ nationality may be required, but it is recommended to allow foreigners to vote in local elections after a certain period of residence;
- ▶ residence (habitual) may be required; a maximum of six months of residence may be required (extensions are only admissible to protect national minorities);
- ▶ a residence requirement for nationals is only admissible for local and regional elections;
- ▶ states may permit out-of-country voters to vote;
- ▶ voters may be registered at their secondary residence, if they reside there regularly and are linked to this place (e.g. by paying taxes there).

An example for an inadmissible restriction, which according to the Court was not founded on objective and reasonable reasons, is comprised in its following judgment in the case *Aziz v. Cyprus* of 22 June 2004 (below).

The right to vote can also be suspended in case of mental incapacity or criminal conviction (Venice Commission 2002: Guidelines, section I.1.1.d.iv). These deprivations must be established by law, proportionality must be preserved and the decision has to be taken explicitly by a court (*ibid.*: Explanatory Report, para. 6.d). Mental incapacity is not per se a reason for deprivation since people with disabilities should be able to exercise their right to vote on an equal basis with other citizens (UN 2006: Article 29(a)). In case of criminal conviction, serious offences must be the basis as disqualification for political crimes or treason committed a long time ago could be considered abusive (International

IDEA 2014a: 167). All in all, restrictions and deprivations of the right to vote should be exceptional to ensure broad participation in elections.



Inadmissible exceptions (the Court's case law)

Facts: the applicant was a Cypriot national residing in the government-controlled part of Cyprus. He applied to the Ministry of the Interior, requesting to be registered in order to vote in the 2001 parliamentary elections. The Ministry refused to register him on the grounds that, under the Cyprus Constitution, members of the Turkish-Cypriot community were excluded from the Greek-Cypriot electoral roll. Since the applicant's appeal to the Supreme Court was dismissed, he was unable to vote.

Law: the Court reiterated that states had considerable latitude to establish rules for parliamentary elections, but such rules had to be justified on reasonable and objective grounds. The difference in treatment of which the applicant complained, resulting from the fact that he was a Turkish-Cypriot, could not be justified on reasonable and objective grounds, particularly in light of the fact that Turkish Cypriots in the applicant's situation had been prevented from voting at any parliamentary election in "the country of which he is a national and where he has always lived".

Conclusion: violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 3 of Protocol No. 1 (right to free elections).

Source: *Aziz v. Cyprus* (22 June 2004)

[http://hudoc.echr.coe.int/eng?i=001-61834#{"itemid":\["001-61834"\]}](http://hudoc.echr.coe.int/eng?i=001-61834#{)

Conditions for deprivations of the right to vote in the case of convicted prisoners were concretised by the Court in two judgments – *Hirst v. the United Kingdom* (No. 2) of 6 October 2005 and *Scoppola v. Italy* (No. 3) of 22 May 2012.



Disenfranchisement of prisoners (the Court's case law) (United Kingdom)

Facts: sentenced to life imprisonment for manslaughter, the applicant was disenfranchised during his period of detention by domestic law, which applied to persons convicted, and serving a custodial sentence. In 2004, he was released from prison on licence. The applicant alleged that, as a convicted prisoner in detention, he was subject to a blanket ban on voting in elections.

Law: the Court held that although states possess a wide margin of appreciation to determine certain deprivations of the right to vote, those must serve a legitimate aim and the principle of proportionality must be met. While there is a wide range of admissible legitimate aims, for proportionality a link to the sanction, the conduct and the circumstances of the individual case is necessary. This should be assessed in an express judicial decision to avoid arbitrariness. The Court concluded that "a blanket restriction on all convicted prisoners in prison" imposed "automatically to such prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances" was a "general, automatic and indiscriminate restriction".

Conclusion: violation of Article 3 of Protocol No. 1 (right to free elections).

Source: *Hirst v. the United Kingdom* (No. 2) (6 October 2005).

[http://hudoc.echr.coe.int/eng?i=001-70442#{"itemid":\["001-70442"\]}](http://hudoc.echr.coe.int/eng?i=001-70442#{)



Disenfranchisement of prisoners (the Court's case law) (Italy)

Facts: the applicant was sentenced to life imprisonment for murder, attempted murder, ill-treatment of members of his family and unauthorised possession of a firearm. Under Italian law, his life sentence entailed a lifetime ban from public office, which in turn meant the permanent forfeiture of his right to vote. The Court of Cassation dismissed an appeal, pointing out that prison sentences of between five years and life entailed permanent disenfranchisement (where the offence attracted a sentence of less than five years, the disenfranchisement lasted only five years).

Law: the Court Chamber of the Second Section on 18 January 2011 found that the disenfranchisement of the applicant was of the "general, automatic and indiscriminate nature" referred to in the Hirst judgment.

Conclusion: violation of Article 3 of Protocol No. 1 (right to free elections).

Process: the Government of Italy requested that the case be referred to the Grand Chamber.

Law: the Court concluded that "in Italy there is no disenfranchisement in connection with minor offences or those which, although more serious in principle, do not attract sentences of three years' imprisonment or more". It also noted "that under Italian law it is possible for a convicted person who has been permanently deprived of the right to vote to recover that right. Three years after having finished serving his sentence, he can apply for rehabilitation ... In addition, the length of the sentence actually served may be reduced in accordance with the early release mechanism ... In the Court's opinion this possibility shows that the Italian system is not excessively rigid."

The Court found that "in the circumstances of the present case, the restrictions imposed on the applicant's right to vote did not 'thwart the free expression of the people in the choice of the legislature', and maintained 'the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage' ... The margin of appreciation afforded to the respondent Government in this sphere has therefore not been overstepped".

Conclusion: no violation of Article 3 of Protocol No. 1 (right to free elections).

Source: *Scoppola v. Italy* (No. 3) (22 May 2012).

[http://hudoc.echr.coe.int/eng#{\"dmdocnumber\":\"908352\", \"itemid\":\"001-111044\"}](http://hudoc.echr.coe.int/eng#{\)

b. Registration procedure and the voter register

Building a register of voters is the operational extension of the formalisation of the right to vote through eligibility criteria. Countries have a margin of appreciation to determine their own system for the registration of eligible voters. However, since the registration process is one of the most critical aspects of elections, it is vital that the key features of the process are clearly regulated within the primary legislation (Venice Commission 2002: Guidelines, section II.2.a).

This is referred to in the Final Report of the OSCE/ODIHR Election Observation Mission to the 2014 Parliamentary Elections in Moldova (below).

Voter registers should be inclusive, accurate, up to date, permanent and transparent, and should respect voting principles and the privacy of data (International IDEA 2014a: 179). Local or central state authorities or the EA are responsible for guaranteeing this (ibid.: 180).

Referring to the building and the maintenance of voter registers, the Code of Good Practice states that the registers must be permanent and regularly updated (at least



New centralised electoral register (Moldova)

Moldova, in the past, ran a highly decentralised electoral register. Records were prepared locally by the public administration. In 2014, Moldova embarked on a reform of the register, aiming to set up a centralised electronic system called the State Register of Voters (SRV). As observed by the OSCE/ODIHR EOM, the SRV was based on the civil register, which was managed by the Ministry of Information Technology and Communications, while the CEC remained legally in charge of maintaining the SRV. Moldovan interlocutors complained about the ambiguity of this set-up.

The OSCE/ODIHR EOM assessed that the system was not sufficiently regulated and that the authorities had not released sufficient information on the operational procedures of the SRV. The EOM recommended that “the SRV would benefit from a more comprehensive regulatory framework, which, among others, needs to include clear mechanisms of data exchange between the SRV and relevant state registries, particularly the Civil Registry and the Population Registry, and to provide for the possibility of public scrutiny of the system”.

Source: OSCE/ODIHR EOM to Moldova, Parliamentary Elections 2014, Final Report, p. 8.

www.osce.org/odihr/elections/moldova/144196?download=true

once a year). If voters are required to register, they should be able to do so over a relatively long period (Venice Commission 2002: Guidelines, section I.1.2), with a view to letting as many voters as possible be registered. Furthermore, eligible voters should not be hindered in registering (UN Human Rights Committee 1981-2014: GC 25, para. 11). For instance, states can implement measures to facilitate absentee registration (The Carter Center 2014: 87) or at least permit voters to return if they reside abroad, in order to register. The creation of a supplementary register for people who have become eligible (or have moved) between registration and voting should be allowed. However, the application of supplementary lists for other reasons should be avoided. Generally, polling stations should not be allowed to register voters to avoid multiple registrations. Registration should be suspended as close as possible to the election day (International IDEA 2014a: 168) and should not take place at the polling station on election day (Venice Commission 2002: Guidelines, section I.1.2.iv).

An example of the building of a voter register can be found in the Final Report of the OSCE/ODIHR Election Observation Mission to the 2013 Presidential Election in Azerbaijan.



Process of building a voter register (Azerbaijan)

Voters' records in Azerbaijan are located in a permanent register maintained by the CEC. Prior to elections, election officials conduct verification of the voter list through door-to-door checks, after which the officials may modify the record. However, this process is unregulated, as it has no basis in the primary legal framework or administrative regulations.

The OSCE/ODIHR EOM recommended that the CEC “develop comprehensive instructions regulating all procedural and operational aspects of the process of voter list verification and updating, with clear assignment of responsibilities for every aspect of the process”.

Source: OSCE/ODIHR EOM to Azerbaijan, Presidential Election 2013, Final Report, p. 26.

www.osce.org/institutions/110015?download=true

Inaccuracies in the registers occur due to unjustified entries or failure to enter eligible voters (Venice Commission 2002: Explanatory Report, para. 7.v). Therefore, the registers have to be published, so that voters can check if they are on the list and their data are correct. Voters who are not registered should have the right to be added to the register. Hence, publication must be done in a timely manner so as to allow for corrections and address challenges in advance of election day. This should be done in an expeditious administrative procedure (which should be subject to judicial control) or a judicial procedure (ibid.: Guidelines, section I.1.2.iv). This intends also to avoid voting by ineligible voters. The law should prescribe who is entitled to demand changes, additions and deletions and on which documents (International IDEA 2014a: 180).

Though no universal treaty focuses explicitly on transparency requirements for voter registration, they apply to the registration process as they do to all aspects of elections. Voter registers contain sensitive personal data and according to universal and regional treaties, states are under obligation to protect them (UN 2003: Article 10; Council of Europe 1985a: Article 5). In practice, laws must regulate the collection of personal information and everyone should have the right to understand what kind of data the state collects and for what purposes (UN Human Rights Committee 1981-2014: GC 16, para. 10). Further, the data should be used exclusively for those purposes for which they were collected and stored; they should be accurate and not excessive (Council of Europe 1985a: Article 5) – that is states should not require more data than necessary to identify the voter and prove his or her eligibility. States should also specify what voter information will be publicly listed in the voter register (International IDEA 2014a: 181).

c. Measures for groups with specific needs

The guiding principle concerning restrictions to eligibility must be to avoid discrimination. The Convention, in its Article 14, explicitly prohibits restrictions “on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. Additionally, physical disability, literacy and education cannot be grounds for disqualification (UN Human Rights Committee 1981-2014: GC 25, para. 10).

With regards to women, the UN Convention on the Political Rights of Women, in its Article 2, states: “Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.” The registration of women can be hindered for social, cultural, religious or legal reasons. Childcare duties, for instance, can prevent women from reaching registration facilities, and name changes due to marriage can also impede their registration (OSCE/ODIHR 2004: 25). States could implement special measures guaranteeing women the right and the opportunity to participate in elections and be registered, which should not be considered discriminatory.

Where national minorities reside, registration forms and instructions should be available in their languages (OSCE 1999: Recommendation No. 7). On the other hand, voters must not find themselves obliged to reveal that they belong to a national minority (Venice Commission 2002: Guidelines, section I.2.4.c).

Facilities and material for registration should be appropriate and accessible for people with disabilities (UN 2006: Article 29(a)(i)). Assistive technologies may be used,

for example, to enable those with disabilities to enter and check their data in the voter register.

With regards to IDPs, there is a growing body of jurisprudence that advises that the right to vote, including voter registration, is granted to them. The UN Guiding Principles on Internal Displacement expressly affirm that IDPs “shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced” (OHCHR 2004: Principle 1.1). The Code of Good Practice recommends that IDPs should have the option to claim their original residence as their official residence. However, their right to vote is often denied because they lack identification papers or do not have residence registration in the area of their resettlement.

The same problems can occur with regard to Roma people. The UN Human Rights Committee, on the registration of Roma people in Albania, recommended the state ensure the issuing of identity cards to Roma people explicitly referencing their right to vote.⁶ Observation reports should strive to detect the reasons for any denials of the right to vote.

As for military personnel, the Code of Good Practice advises that they should be able to vote at their place of residence whenever possible (Venice Commission 2002: Guidelines, section I.3.2.xi). Otherwise, it is advisable to register them at the polling station nearest to their duty station.

6. UNHRC/C/ALB/CO/2 (Albania 2013), para. 23. Available here: www.refworld.org/pdfid/5283461e4.pdf

	Voter registration (standards and good practices)	OSCE/ODIHR EOM Reference (final reports)
Voter eligibility	To ensure universal suffrage, mentally incapable people should not be automatically denied the right to vote. Only conviction for serious crimes should be a reason for deprivation. Disenfranchisement should only be admissible due to a court decision.	Belarus 2012, p. 7 Ukraine 2012, p. 6 Moldova 2014, p. 6 Moldova 2015, p. 7
	Voter registers should be accurate, complete and regularly updated.	Moldova 2015, p. 8
	Where active registration is applied there should be enough time for eligible voters to register.	Georgia 2012, p. 10
	A centralised voter register should be established to prevent multiple registrations.	Belarus 2012, p. 8
	Changes in the voter register that lead to disenfranchisement should be made early and supported by an information campaign.	Georgia 2013, p. 7
Voter registration and voter register	There should be clear mechanisms of data exchange between the civil and electoral registry. Newly established electronic voter registers should be tested before election day.	Moldova 2014, p. 8 Moldova 2014, p. 8
	To avoid multiple registrations, voter registration should be generally finished before election day.	Belarus 2012, p. 8 Azerbaijan 2013, p. 8 Moldova 2014, p. 9
	Voter lists should be published and provided for public scrutiny, including a detailed breakdown of the number of voters added and removed.	Azerbaijan 2013, p. 9 Ukraine May 2014, p. 13 Moldova 2015, p. 9
	Practices on the disclosure of personal data should be formalised and harmonised among different laws. Personal data should be sufficiently protected.	Moldova 2014, p. 8 Moldova 2015, p. 9
	For corrections and challenges an expeditious court decision should be provided.	Ukraine 2012, p. 13
Groups with special needs	Voter lists and other material should be available in minority languages.	Georgia 2012, p. 23
	IDPs must not be denied the right to vote or to be registered.	Georgia 2012, p. 10
	ID cards should be issued to Roma people so they can register.	Moldova 2011, p. 21 Ukraine May 2014, p. 21

5. CANDIDATE REGISTRATION

Candidates, political parties and coalitions represent the opinions of the voters and their political attitudes. The precondition for their participation in an election campaign is their registration. To ensure a representative choice in a democracy, the greatest possible percentage of the electorate must be able to stand for elections while at the same time taking into consideration the existing restrictions.

The following chapter deals with the right to stand for elections and restrictions to it; the registration procedure; and candidates belonging to underrepresented groups with specific needs.

a. The right to stand for elections

According to the principle of universal suffrage, each citizen has the right to stand for elections. However, since this is not an absolute right, limitations can apply. These restrictions should be based on objective and reasonable criteria that are established by law (UN Human Rights Committee 1981-2014: GC 25, para. 4). Any restriction should not unduly hinder people in standing for elections, to prevent the domination of an unrepresentative elite in elected bodies (Council of Europe 1985b). However, restrictions can be stricter than in the case of voter eligibility and may be divided into “reasonable” and “unreasonable” restrictions. There may also be deprivations of the right to stand for elections.

The Venice Commission (2002: Guidelines, section I.1.1) provides a list of basic “reasonable restrictions” concerning:

- age: the required minimum age should be preferably the same as that for the right to vote; the age limit may be stricter but should not exceed 25 years of age, except for certain offices (e.g. presidents or mayors), to avoid discrimination against young adults;
- nationality: the right to stand in local elections may be awarded to foreigners (legally and habitually) residing in a country for five years (Council of Europe 1997: Article 6(1)); citizens residing abroad may be accorded the right to stand for elections;
- residency (habitual): for nationals, the length of residence may only be required for local or regional elections and should not exceed six months.

Examples of such restrictions are provided in the Final Report of the OSCE/ODIHR Election Observation Mission to the 2013 Presidential Election in Georgia.



Basic restrictions to the right to stand for elections (Georgia)

The EOM found that “[u]nder the Constitution, any citizen of Georgia who has the right to vote, is at least 35 years of age, has lived in Georgia for at least five years, and resided in Georgia for at least three years before the election was called, may be elected president. The residency requirements imposed appear disproportionate and at odds with international standards.”

It therefore recommended: “The existing residency requirements for presidential candidates appear overly restrictive and should be reconsidered or reduced.”

Source: OSCE/ODIHR EOM to Georgia, Presidential Election 2013, Final Report, p. 8.

www.osce.org/odihr/elections/110301?download=true

Another reasonable restriction to eligibility may be limiting the number of terms in office (European Charter of Local Self-Government: para. 67). Further, there can be certain incompatibilities that can affect a candidate's status since some public offices include the duty to be impartial (e.g. for judges, prosecutors, police officers, members of election commissions, tax authorities or members of the defence forces). Applicants holding such offices may be asked to resign from their positions before campaigning to avoid a conflict of interests (*ibid.*: paras. 55-66).

“Unreasonable restrictions” can be, for example, based on political or other opinion, party membership, illiteracy, education, property requirements (UN Human Rights Committee 1981-2014: GC 25, para. 10), economic circumstances (OHCHR 1994: 65) or the holding of another position that does not constitute a conflict of interest (UN Human Rights Committee 1981-2014: GC 25, para. 16).

The right to be elected can also be suspended. The conditions for such restrictions must be provided for by law and the principle of proportionality has to be observed according to the Code of Good Practice. Any withdrawal of political rights must be based on mental incapacity or criminal conviction for a serious offence, and may only be imposed by the express decision of a court. However, conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them (Venice Commission 2002: Explanatory Report, para. 6.d).

b. Registration procedure and the candidate list

Candidate registration, that is receiving and validating nominations, is one of the core tasks of the EA, the duty of which is to treat all candidates impartially and equitably (International IDEA 2006: 74, 151).

Candidates can be political parties, coalitions of parties or individuals, or independent candidates. Political parties may be able to participate in an election campaign automatically because of their status as registered parties. In this event, party formation requirements become interesting for election observers (*ibid.*: 192). All requirements must not be so strict as to impair the freedom of association. Additionally, all parties should be treated equally by the state, regardless of their ideological position (International IDEA 2014a: 192), and be able to nominate candidates in their favour. In any case, registration must not be abused to suppress inconvenient movements, and the law must not be applied arbitrarily or discriminatorily (The Carter Center 2014: 109, 111). Individuals may run as independent or non-affiliated candidates. The requirements for political parties and independent candidates should be the same in order to avoid disadvantages for the latter (UN Human Rights Committee 1981-2014: GC 25, para. 17). States may even ease registration for independent candidates. If registered, no one should suffer a disadvantage from the sole fact of his or her candidacy (*ibid.*: para. 15).

The registration process needs to be clearly regulated by rules, set in advance of the opening of the registration, and stating how and where the registration takes place and how the registration is verified. The process should be inclusive and transparent. Candidates must have adequate time to register and should be given sufficient information on registration periods (International IDEA 2014a: 192).



Deposit requirements (the Court's case law)

Facts: the applicant wanted to stand for the parliamentary elections of January 2002. However, a local electoral commission refused to register him as a candidate due to his failure to pay an electoral deposit equivalent to about €160 at the time. The applicant claimed he was unable to meet the requirement since his annual income amounted to the equivalent of about €140. The CEC upheld the refusal and his complaint to the Supreme Court was likewise refused.

Law: the Court noted that the electoral laws of a number of European states provided for measures to discourage frivolous candidates from standing. Moreover, the states participated in the campaign costs of the registered candidates to promote equality among the contestants. Hence, the Court concluded that the law in question "pursued the legitimate aim of guaranteeing the right to effective, streamlined representation by ... confining elections to serious candidates, whilst avoiding the unreasonable outlay of public funds". Moreover, the Court recognised the "careful consideration by the domestic legislature and judiciary" on the amount of the deposit in Ukraine, which was among the lowest in Europe. The deposit could not therefore "be considered to have been excessive or such as to constitute an insurmountable administrative or financial barrier" for standing in the elections.

Conclusion: no violation of Article 3 of Protocol No. 1 (right to free elections).

Source: *Sukhovetsky v. Ukraine* (28 March 2006).

[http://hudoc.echr.coe.int/eng?i=001-72893#{"itemid":\["001-72893"\]}](http://hudoc.echr.coe.int/eng?i=001-72893#{)

To register and to prove the seriousness of the candidature and sufficient support by voters, additional requirements such as monetary deposits or minimum number of signatures (with or without a geographical spread) can be applied (ibid.: 193). Another means is to require a financial deposit, which must be refunded if the party or candidate exceeds a certain score (Venice Commission 2002: Guidelines, section I. 1.3.vi).

In its case *Sukhovetsky v. Ukraine* (28 March 2006) the Court addresses the conditions and limits of financial deposits.

The candidate can also be asked to collect a minimum number of supporting signatures. However, their number should not exceed 1% of the voters in the constituency (Venice Commission 2002: Guidelines, section I.1.3.ii) and voters should be able to sign for more than one party or candidate (The Carter Center 2014: 113). The procedure of validating signatures is particularly sensitive. In general, all signatures should be checked. If the required number of valid signatures is reached, the rest do not need to be considered (International IDEA 2014a: 193). An administrative or judicial body can execute the validation procedure, which must be terminated by the beginning of the electoral campaign period to grant all candidates the same chances. The whole process should be open to scrutiny by party or candidate agents and election observers.

Denial of a registration must be based on objective criteria. The reasons for withdrawal or removal in a particular case should be made public immediately. Minor errors should be allowed to be corrected before a nomination is rejected.

This is noted in the Final Report of the OSCE/ODIHR Elections Observation Mission to the 2012 Parliamentary Elections in Ukraine.



Rejecting registration due to minor mistakes (Ukraine)

The EOM noted that “[t]he CEC considered any nomination document that did not contain all data required by law as not having been filed and rejected candidates for the omission of these documents. Despite its authority to ensure citizens’ electoral rights, the CEC did not inform candidates about mistakes and omissions, leaving them unable to correct mistakes. Overall, 441 nominees were not registered, mostly on the grounds that necessary documents had not been provided; many were rejected for minor omissions, which is at odds with paragraph 24 of the 1990 OSCE Copenhagen Document”.

It therefore recommended: “Effective notification mechanisms could be introduced so that prospective candidates are informed by the election administration of cases where mistakes or omissions were found in their nomination documents, enabling them to correct such mistakes.”

Source: OSCE/ODIHR EOM to Ukraine, Parliamentary Elections 2012, Final Report, p. 14.

www.osce.org/odihr/elections/98578?download=true

An effective remedy to an independent judicial body should be provided in case of refusal of a registration (OHCHR 1994: para. 107). Complaints must be heard within an expedited timeframe to allow corrections or the registration of the applicant before election day if his or her appeal is successful (International IDEA 2014a: 193). There should be a clearly set deadline after which candidatures cannot be challenged any more.

According to the principle of free suffrage, states have an obligation to provide information to the public on lists and candidates (Venice Commission 2002: Guidelines, section I.3.1.b). Candidate lists should be published at the end of the registration process and posted in polling stations on election day.

c. Candidates belonging to underrepresented groups

The right to stand for elections should be granted without any discrimination (OSCE 1990a: para. 7.5). States can implement special measures that increase participation of traditionally underrepresented groups.

The right to be eligible for all public offices is guaranteed to women as any discrimination on grounds of sex is prohibited under Article 14 of the Convention. In the Court’s case law, this prohibition is interpreted in the case *Staatkundig Gereformeerde Partij v. the Netherlands* (10 July 2012) (below).

The Committee of Ministers of the Council of Europe, in its Recommendation Rec(2003)3, recognises that women’s equal participation “in political and public decision making is a matter of the full enjoyment of human rights ... and a necessary condition for the better functioning of a democratic society”. The Parliamentary Assembly’s Recommendation 1899 (2010) suggests that for a more equitable and balanced representation of women, special measures, such as quotas, may be introduced. Other measures noted here include candidate lists alternating men and women and putting women at the top of the list, or in a majoritarian system the obligation to ensure equal participation of women and men among candidates of the same party (see also Venice Commission 2006a).



Eligibility of women (the Court's case law)

Facts: the applicant is a Dutch association, functioning as a political party called the Reformed Protestant Party. This is a confessional political party basing itself directly on the "infallible Word of God as revealed in the Bible" and professing its absolute authority over all areas of societal life. The party believes that, although all human beings are of equal value as God's creatures, differences in nature, talents, place and role in society should be recognised. Thus, women are not inferior to men as human beings; however, they should not be eligible for public office. In a 2010 judgment the Dutch Supreme Court upheld that the state was under obligation to take measures to ensure that the party grants the right to stand for election to women. Following this judgment, the party lodged an application to the Court alleging violations of Article 9 (freedom of religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly and association).

Decision on admissibility: although the Court ruled that the case was inadmissible, it took the view that the action to bar women would result in denying their fundamental human rights under Article 3 of Protocol 1 (right to free elections) and Article 14 (prohibition of discrimination) of the Convention, regardless of the deeply held religious convictions on which such actions were based.

Source: Staatkundig Gereformeerde Partij v. the Netherlands (10 July 2012).

[http://hudoc.echr.coe.int/eng?i=001-112340#{"itemid":\["001-112340"\]}](http://hudoc.echr.coe.int/eng?i=001-112340#{)

In its Final Report, the OSCE/ODIHR Election Observation Mission to the 2012 Parliamentary Elections in Ukraine recommended the introduction of measures to increase women's participation.

At the same time, mechanisms should exist that, for example, deny the registration of candidate lists that are not composed in a balanced way, or impose financial penalties, to encourage parties to introduce equitable measures. This is emphasised in the findings of the OSCE/ODIHR Election Observation Mission to the 2014 Early Parliamentary Elections in Ukraine.

Further, the way in which women are portrayed in general and during the election campaign has an impact on the desire of women to stand as candidates and their likelihood of being elected. States may hence implement training and mentoring programmes to encourage women to stand as candidates (The Carter Center 2014: 114).



Measures to increase women's participation in decision making (Ukraine)

The OSCE/ODIHR EOM noted that despite gender equality being included in the Ukrainian Constitution there was a lack of interest among parties to promote female candidates and that few women were included in top positions or other eligible positions on parties' candidate lists.

Based on this, the EOM recommended: "Political parties could be encouraged to promote gender equality and to take resolute actions to put forward gender-balanced candidate lists, to increase visibility of female candidates during election campaigns and to integrate gender issues into their platforms. The introduction of a gender requirement for nomination of party lists could be considered as a temporary measure."

Source: OSCE/ODIHR EOM to Ukraine, Parliamentary Election 2012, Final Report, p. 37.

www.osce.org/odihr/98578?download=true



Enforcement mechanisms for gender equality (Ukraine)

The OSCE/ODIHR EOM noted that “[a]mendments to the Law on Political Parties adopted in 2013 introduced a 30 per cent quota for women on party lists, but the law remains silent on the ranking of candidates on party lists, and there are no enforcement mechanisms in place”.

Based on this, the EOM recommended: “Notwithstanding possible changes to the electoral system, women’s underrepresentation in parliament should be addressed through stricter enforcement mechanisms and/or additional special temporary measures that could create more equitable conditions for all candidates.”

Source: OSCE/ODIHR EOM to Ukraine, Early Parliamentary Elections 2014, Final Report, p. 32.

www.osce.org/odihr/elections/ukraine/132556?download=true

In addition, candidates with children may be discouraged to stand as candidates as they must reconcile their jobs and childcare with the duties of their public positions if they are elected (Congress of Local and Regional Authorities 2015a: para. 5). Often they also face the possibility of lower wages and even job loss because of their public duties. This can lead to an overrepresentation of rich and elderly people with fewer such limitations (ibid.: para. 2). Therefore, states should consider measures to increase the attractiveness of public offices.

People with disabilities should be able to participate in political and public life as elected representatives on an equal basis with other citizens at all levels of government (Council of Europe 1950: Article 14; UN 2006: Article 29) This includes the right to independently stand as candidates in elections. If appropriate, auxiliary and new technologies should be used to enable people with disabilities to run for office.

National minorities should be granted the right to stand for elections without discrimination (Council of Europe 1995: Article 4; OSCE 1999: Recommendation 7). According to the Code of Good Practice, information on lists and candidates must be available in minority languages, at least where they amount to a certain percentage of the population. For candidates from national minorities, specific list positions may be reserved to ensure their equal participation.

IDPs must be granted the right to stand for elections on an equal basis with all other citizens (OHCHR 2004: Principle 1.1) by putting into place special measures aimed at ensuring their access to candidate registration.

	Candidate registration (standards and good practices)	OSCE/ODIHR EOM Reference (final reports)
The right to stand for elections	Dual citizenship as a barrier to candidacy could be considered too restrictive.	Georgia 2013, p. 9
	For nationals a certain period of residence can only be demanded for local or regional elections.	Ukraine 2012, p. 6
	Such a period of residence should not be longer than six months, except if national minorities must be protected.	Ukraine 2012, p. 6 Armenia 2013, p. 9 Azerbaijan 2013, p. 9
	Educational requirements are unreasonable.	Azerbaijan 2013, p. 9
	Any deprivation must be specified by law and observe the proportionality principle.	Ukraine 2012, p. 6 Armenia 2013, p. 5
	Convictions that have been expunged must not have any legal consequences.	Belarus 2012, p. 8
Process of registration	Candidates must be given enough time to register.	Azerbaijan 2013, p. 5
	The registration should be completed by the time the election campaign period starts.	Moldova 2011, p. 9 Moldova 2015, p. 10
	A requested deposit must be refundable if the candidate or party exceeds a certain score. The sum and the score requested should not be excessively high.	Ukraine 2012, p. 13 Armenia 2013, p. 5 Ukraine May 2014, p. 15
	The number of signatures required should not exceed 1% of voters in the constituency concerned.	Moldova 2015, p. 10
	Voters should be allowed to sign more than one support petition.	Moldova 2014, p. 9
	The validation process must generally cover all signatures.	Belarus 2012, p. 9
	The verification of registration documents should be open to scrutiny by candidates or their representatives and election observers.	Belarus 2012, p. 9 Azerbaijan 2013, p. 10
	Minor mistakes should not be grounds to reject registrations and their correction should be allowed.	Belarus 2012, p. 9 Azerbaijan 2013, p. 10 Ukraine Oct. 2014, p. 14

Process of registration	The denial of a registration must be based on reasonable criteria set by law.	Belarus 2012, p. 9
	De-registration should be limited to extraordinary cases and be defined clearly and exhaustively by law.	Armenia 2013, p. 9
	There must be sufficient time for legal remedy.	Azerbaijan 2013, p. 6
	Lists of candidates must be published after the closing of the registration.	Moldova 2015, p. 10
Special measures for underrepresented groups	Special temporary measures like quotas or alternating candidate lists can be introduced to enhance representation of women.	Armenia 2012, p. 10 Ukraine 2012, p. 14 Moldova 2015, p. 10
	The effectiveness of such measures should be ensured.	Armenia 2012, p. 10
	Political parties could nominate national minority candidates to enhance their representation.	Moldova 2014, p. 19 Ukraine Oct. 2014, p. 22
	Candidate registration documents should be provided in minority languages.	Moldova 2011, p. 21

6. ELECTION CAMPAIGN

The election campaign is the primary, central factor in the formation of the voters' opinion. Hence, voters must not be coerced or intimidated. Additionally, while contesting for the favour of the voters, candidates and political parties must be guaranteed in particular a level playing field and the freedom of opinion and expression.

The two major issues of the election campaign are highlighted below.

a. Campaign conduct

During the election campaign all political forces and candidates should be free to engage in political campaigning and to distribute their programmes freely and equally to the electorate (OHCHR 1966: Articles 25-6; International IDEA 2014a: 214). This assumes an equal timeframe for campaigning and the state fulfilling its obligations to treat the candidates equally, taking into account underrepresented groups' special needs and the granting of fundamental freedoms, not to mention the candidates' commitment to fair behaviour.

The timeframe

The length of the campaign period should be equal for all candidates and adequate to enable them to campaign effectively; a concrete starting point may be codified (International IDEA 2014a: 214; OHCHR 1994: para. 108). At the end of the campaign, a campaign silence period may be imposed – though not overly long – to allow voters to decide on their vote freely and without pressure (Committee of Ministers 1999: Appendix, para. III.1).

Equal treatment of candidates by state authorities

State authorities are obliged to act impartially and treat political parties and candidates equally with regard to public funding, broadcasting times and other campaign-related aspects (Venice Commission 2002: Guidelines, section I.2.3.a). The equal level of competitors should be codified to the point of clear conditions for the placement of the candidates on the ballot paper (The Carter Center 2014: 115). The legal framework must be applied uniformly to all candidates (Venice Commission 2002: Explanatory Report, para. 18). Public employees who are not directly involved in the EA should not interfere with the election campaign (OSCE/ODIHR 2003b: 82).

The impartiality of state authorities is elaborated in the Final Report of the OSCE/ODIHR Election Observation Mission to the 2013 Presidential Election in Azerbaijan.

Fundamental freedoms

Of particular relevance during the election campaign are fundamental human rights – notably the freedoms of association, of opinion and expression, of assembly as well as of movement. However, these rights may be restricted as long as they are proportional, in the public interest and based on law (Venice Commission 2002: Guidelines, section II.1.b).



Impartiality of state authorities in the election campaign (Azerbaijan)

The EOM observed that “[s]ome contestants experienced difficulties in renting private premises for their activities due to alleged pressure by the local authorities. The campaign of a candidate alleged obstruction of their campaign activities by the police”.

It concluded: “Authorities should undertake further measures to ensure that election campaigning be conducted in an atmosphere free from intimidation and fear of retribution. Authorities ... should refrain from coercing public-sector employees, campaign activists and others to attend campaign events of incumbents, as well as disrupting campaign events of the opposition.”

Source: OSCE/ODIHR EOM to Azerbaijan, Presidential Election 2013, Final Report, p. 12.

www.osce.org/institutions/110015?download=true

Firstly, people need to have the right to freely associate for political purposes, which comprises the formation and joining of political parties or non-governmental organisations (NGOs), such as groups of election observers (Council of Europe 1950: Article 11; OHCHR 1966: Article 22; UN Human Rights Committee 1981-2014: GC 25, para. 27).

Central for candidates is the freedom of opinion and expression (Article 10 of the Convention) allowing them to freely express their political points of view. It would be too restrictive to request candidates to submit their campaign material to the EA before it is published (Venice Commission 2002: Explanatory Report, para. 61). A candidate’s opinion opposing the government or calling for constitutional change should be admissible since this represents the essence of democratic debate. Electoral law that prohibits insulting or defamatory references to officials or other contestants violates European standards (*ibid.*). Further, voters, candidates and political parties should not be subject to pressure, intimidation or manipulation. Ultimately, voters must be able to receive basic information on all contestants.

The state must ensure the freedom of assembly (Article 11 of the Convention), which for voters and all political forces comprises the freedom to assemble peacefully in public places, and to hold meetings or campaign events. Restrictions may apply according to Article 11(2) of the Convention if they are in “law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”.

Inadmissible restrictions were noted in the OSCE/ODIHR Election Observation Mission’s Final Report on the 2012 Parliamentary Elections in Belarus.

Freedom of movement (Article 2(1) of Protocol No. 4 to the Convention) entails in particular that the movement of campaign workers and materials should not be restricted or interfered with (The Carter Center 2014: 119).

The state should, finally, ensure the security of candidates, campaign workers and supporters according to Article 5(1) of the Convention. Security forces can be deployed moderately and adequately for this task assuming that they act impartially and



The right to assemble in the election campaign (Belarus)

The EOM noted “the presence of police officers in civilian clothing at campaign events organized by opposition candidates, where participants were sometimes filmed or photographed by unidentified individuals who did not represent the media. These and other incidents contributed to an atmosphere of intimidation and pressure on candidates and activists associated with the opposition”.

Accordingly it stressed that “[a]ll electoral stakeholders should be able to exercise their right to assemble during elections ... without the threat of arrest”.

Source: OSCE/ODIHR EOM to Belarus, Parliamentary Elections 2012, Final Report, p. 11.

www.osce.org/odihr/elections/98146?download=true

without intimidating stakeholders and citizens (European Commission 2008: 75; OSCE/ODIHR 2003b: 79).

These freedoms and any restrictions on them must be clearly regulated by law and any violation by candidates or authorities should be subject to appropriate sanctions (Venice Commission 2002: Explanatory Report, para. 19).

Principles of good behaviour for candidates

States should define in their electoral or criminal law types of campaign conduct and behaviour that are prohibited such as vote buying (provision of money or other benefits to citizens in the hope of their vote), violence and intimidation while campaigning, or advocacy of national, racial or religious hatred (OHCHR 1966: Article 20(2); OSCE/ODIHR 2015: 23). These rules must be clear and unambiguous to enable candidates to understand which behaviour is inoffensive (International IDEA 2014a: 216). Reasonable sanctions should apply equally to all offenders taking into account the weight of the offence; disqualifications of candidates may be admissible for a limited period of time (*ibid.*). Candidates must not be held liable for offences committed by their supporters (Venice Commission 2002: Explanatory Report, para. 61). The legal framework must also provide procedures for complaints and appeals during campaigns. An effective remedy requires prompt decisions to avoid irreparable harm (International IDEA 2014a: 215).

In particular, the misuse of administrative resources for partisan purposes by governing parties and their candidates, such as the use of government offices and equipment (e.g. means of telecommunication) or official vehicles should be prohibited (Venice Commission/OSCE/ODIHR 2016: section II.B.1.1; OSCE/ODIHR 2003b: 82). Additionally, if programmes are introduced by the government shortly before elections, such as public works or patronages, it should be carefully observed whether in fact particular candidates or parties benefit from the promotion of those programmes (OSCE/ODIHR 2003b: 82). In general, the advantage of incumbency that applies to contestants (or representatives of the parties) holding official positions and performing official duties during the campaign can potentially lead to a blurred line between the state and political parties (OSCE 1990a: para. 5.4).



Undue encouragement of public employees in election campaigns (Armenia)

In Armenia, the EOM “observed numerous cases where RPA [Republican Party of Armenia] actively involved teachers and pupils in campaign events, including in schools and/or during school hours. The RPA campaign was conducted at the local level with the active participation of school directors and teachers. In one instance, the rector of a private university, during school hours, encouraged attendants to vote for RPA candidates.” Consequently, it held that “[t]he misuse of administrative resources, including human resources of education-sector employees... contributed to an unequal playing field for political contestants, contravening paragraph 7.7 of the OSCE 1990 Copenhagen Document.”

Source: OSCE/ODIHR EOM to Armenia, Parliamentary Elections 2012, Final Report, p. 12.

www.osce.org/odihr/elections/91643?download=true

Moreover, the manipulation or intimidation of government employees, such as ordering them to attend election campaign rallies or requiring them to make payments to political parties should be prohibited by law (The Carter Center 2014: 127).

An example of undue encouragement of public employees in election campaigning can be found in the Final Report of the OSCE/ODIHR Election Observation Mission to the 2012 Parliamentary Elections in Armenia.

Candidates and political parties may also agree on voluntary codes of conduct comprising commitments to respect other contestants and the rights of citizens as well as good practices, such as not destroying the posters or leaflets of rival contestants or not preventing them from holding meetings or demonstrations (International IDEA 2014a: 215).

Measures for underrepresented groups

Special measures can apply for traditionally underrepresented groups to avoid discrimination in terms of Article 14 of the Convention and their exclusion from the election campaign.

States can consider measures for female candidates such as leadership and negotiation training, mentoring programmes or additional public funding to increase their visibility in the election campaign (The Carter Center 2014: 114). On the other hand, candidates and parties could consider how to better integrate gender issues in their campaigning to attract more female voters.

This is noted in the Final Report of the OSCE/ODIHR EOM to the 2013 Presidential Election in Georgia.

Public places and facilities should be accessible for the campaigning of candidates with disabilities through auxiliary means and new technologies where necessary (UN 2006: Articles 9, 29(a)).

Furthermore, candidates belonging to national minorities must be free to express their views along with other candidates. National minority issues could be addressed



The image of women in the election campaign (Georgia)

The EOM noted that “in their campaigns and platforms candidates did not bring up issues specifically affecting women and most of them referred to the traditional role of women in the Georgian family.”

It therefore suggested: “Parties and candidates could consider how to integrate a gender perspective into their campaign strategies in order to better represent the interests of both male and female voters.”

Source: OSCE/ODIHR EOM to Georgia, Presidential Election 2013, Final Report, p. 10.

www.osce.org/odihr/elections/110301?download=true

by other candidates and parties by including national minorities, especially if there is no minority candidate standing.

b. Campaign financing

Firstly, it should be noted that it is necessary in the field of campaign financing to exercise care and be aware of differences in national campaign finance systems. The following standards are hence best interpreted as principles or objectives of regulation rather than blueprints.

Campaign financing comprises direct or indirect expenditure and contributions for electoral purposes (OSCE/ODIHR 2015: 18). Indirect funding or in-kind contributions include, for instance, the provision of public or private space or facilities (e.g. postal services, airtime), direct payment for election campaign goods and services by its providers or their supply at less than market price, or loans on favourable terms.

Aspects of campaign financing that will be considered in the following sections are the legal framework, rules for private and public support, limits on campaign expenditure as well as disclosure and monitoring of campaign finances.

The legal framework

The law should comprise rules for both political party and campaign financing, and not only for parties but also for individual candidates and elected representatives (International IDEA 2014a: 91). It is particularly important that the regulation of the non-election financing of political parties is co-ordinated with the regulation of campaign financing, so that the latter cannot be disguised as “ordinary” finance. The legal framework should clearly state the timeframe in which campaign finance rules apply and must be clear, unambiguous and publicly available (OSCE/ODIHR 2015: 18; The Carter Center 2014: 109). The regulations should promote transparency as well as aim at the integrity of the entire electoral process and grant a level playing field for all contestants (International IDEA 2014a: 91). “Effective, proportionate and dissuasive sanctions” (Committee of Ministers 2003b: Article 16) should be defined for the violation of the law by political parties and candidates and for corruption (UN 2003: Articles 24, 26; OHCHR 1994: para. 118). Sanctions should eliminate any benefit gained from the violation and may range from administrative sanctions, depending on the seriousness

of violations (e.g. the monetary impact), to criminal sanctions in case of significant violations (OSCE/ODIHR 2015: 22).

Private funding

Parties and candidates should be entitled to receive resources from individuals and legal entities for electoral purposes and may be allowed to contribute to their own campaign within reasonable limits (Committee of Ministers 2003b: Article 1; Venice Commission 2006b: para. 31). Regulations should encourage parties to formulate their financing mechanisms with the aim of achieving autonomy. Adequate restrictions on private funding of candidates and political parties as well as associated entities should be considered to create a level playing field, enhance independence and transparency, and prevent corruption (Committee of Ministers 2003b: Articles 3(a), 3(b), 6; UN Human Rights Committee 1981-2014: GC 25, para. 19). Limits can refer to maximum values and sources of loans if they are permitted, the sum of donations in total, or the value of donations provided by a single donor (The Carter Center 2014: 123). Particularly, contributions made by anonymous donors should be restricted to a certain limit to ensure that they cannot unduly influence the election campaign removed from public scrutiny (Congress of Local and Regional Authorities 2000: para. 16). Moreover, donations from foreign donors and companies providing goods or services to the state should be limited or strictly regulated (Committee of Ministers 2003b: Articles 5(b), 7).

Public funding

Political parties should obtain reasonable support from the state for electoral purposes, in order to help political parties become independent of single private donors and their interests (Parliamentary Assembly 2001: para. 8(a)(ii)). However, states themselves should not interfere with the independence of political parties (Committee of Ministers 2003b: Article 1). State support may also be used to promote parliamentary stability or to pursue other aims. For example, subsidies may be provided to match private donations up to a certain point, and on condition that the party or candidate fulfils disclosure requirements – thereby encouraging political participation and transparency. Public funding must be allocated in a timely manner for candidates to run their campaign, and equitably, that is either strictly or proportionally equal (Venice Commission 2002: Guidelines, section I.2.3.b; European Commission 2008: 75). The latter means that parties receive funding according to the votes they gained in previous elections or to their seats in parliament. In addition, state support should ideally be extended to parties standing for election and enjoying a minimum level of civic encouragement in order to enable new parties to compete with established ones (Parliamentary Assembly 2001: para. 8(a)(ii); OSCE 1990a: para. 7.6).

Limits on campaign expenditure

Expenditure ceilings or a total ban on certain types of spending (e.g. private TV advertising) could be considered to grant equality of opportunity (Venice Commission 2002: Explanatory Report, para. 21). If so, the term “expenditure” should be clearly defined by law, in-kind expenses should be calculated according to their market value and imposed

limits should be balanced against the fundamental freedoms of parties and candidates and their need to run an effective campaign (OSCE/ODIHR 2015: 35).

Disclosure and monitoring of campaign finances

To enhance transparency and accountability, the contestants should publish comprehensible reports on their campaign finances in advance and after election day (ibid.: 20). Such reports should include information on all entities that are directly or indirectly related to, or otherwise under the control of, a political party (Committee of Ministers 2003b: Article 11). Additional to the nature and value of each donation (financial and in-kind), the source of a donation that exceeds a certain value should be disclosed while simultaneously recognising the need to keep a balance between transparency and the privacy of donors (ibid.: Articles 12(a), (b); The Carter Center 2014: 127).

Moreover, candidates and political parties should be required to present data on election campaign financing – and where applicable at least on an annual basis on party financing – to an independent, public oversight authority in order to monitor the implementation of regulations (Committee of Ministers 2003b: Article 13(a); OSCE/ODIHR 2015: 20). The decisions of such bodies should be accessible, provided in a timely manner and open to appeal by parties and candidates (The Carter Center 2014: 128). Of particular importance with regard to the independence of public monitoring bodies are appointment procedures, a clear definition of the bodies' powers and a sufficient budget.

These aspects were stressed by the OSCE/ODIHR Election Observation Mission in its Final Report on the 2014 Parliamentary Elections in Moldova.



Campaign finance monitoring (Moldova)

In Moldova, the CEC receives reports by contestants who have opened a dedicated bank account for campaign expenditure (this is not prescribed by law, but is done by most contestants). The CEC can issue warnings if reports are not submitted within the deadlines or not in the required format, and take decisions. However, if complaints are submitted, the CEC often does not have the means to verify the evidence. In such cases, the CEC forwards the complaints to the General Prosecutor's Office and to the tax and police authorities where some cases remain unaddressed or unpunished.

The EOM concluded: "Consideration could be given to designating an independent body with means and resources to oversee campaign finance and to impose sanctions in cases of violations. Should this body remain to be the CEC, it should be vested with full oversight authority and responsibilities and should exercise them more determinedly."

Source: OSCE/ODIHR EOM to Moldova, Parliamentary Elections 2014, Final Report, pp. 12-14.

www.osce.org/odihr/elections/moldova/144196?download=true

	Election campaign (standards and good practices)	GRECO Reference ⁷	OSCE/ODIHR EOM Reference (final reports)
Campaign conduct	The campaign period should begin at the same time for all parties and candidates.		Moldova 2014, p. 10
	The clear separation of political parties from the state should be ensured.		Georgia 2012, p. 13 Armenia 2013, p.11
	The law should clearly prohibit the misuse of administrative resources.	Montenegro, p. 15 Serbia, p. 15	Georgia 2012, p. 13 Ukraine 2012, p. 16 Armenia 2013, p. 10
	Fundamental human rights like the right to freedom of expression and opinion, assembly, association and movement must be guaranteed.		Armenia 2012, p. 12 Ukraine 2012, p. 15
	Candidates' programmes should not be approved or amended by the EA.		Belarus 2012, p. 14
	All contestants and their supporters should be able to campaign without fear of violence.		Ukraine Oct. 2014, p. 15
Special measures	Campaign conduct inciting violence, hatred or discrimination should be prohibited.		Ukraine 2012, p. 15
	Parties and candidates can consider strategies that are more responsive to gender issues.		Georgia 2013, p. 10
Campaign financing	Rules on financing should apply both to political parties and election campaigns, and to not only parties but also individual candidates and elected representatives.	Bosnia and Herzegovina, p. 18 Czech Republic, p. 19	
	"Donation" or "contribution" should be defined sufficiently broadly to include in-kind contributions.	Albania, p. 20 Norway, p. 21 Spain, p. 17	Georgia 2013, p. 12

7. "GRECO Reference" refers to the Third Round Evaluation Report (Theme 2 – Transparency of party funding), where GRECO describes aspects of regulation that do not comply with the standards. The reports serve as guidance on how Recommendation Rec(2003)4 is interpreted.

	Election campaign (standards and good practices) (cont.)	GRECO Reference ⁷	OSCE/ODIHR EOM Reference (final reports)
Campaign financing	Parties and candidates who violate the regulations should be equally subject to "effective, proportionate and dissuasive sanctions".	Czech Republic, p. 21 Moldova, p. 24	Armenia 2012, p. 27 Ukraine 2012, p. 18 Georgia 2013, p. 12
	Limits on the value of donations provided by a single donor should be considered.	Sweden, p. 9	Ukraine 2012, p. 18
	Donations from state or publicly controlled entities should be prohibited, and donations from foreign donors and companies providing goods or services to the state should be limited or strictly regulated.	Slovenia, p. 24 Spain, p. 15ff	
	Anonymous contributions should be restricted.	Denmark, p. 12 Finland, p. 15	
	Political parties should receive support from the state, allocated on the basis of "objective, fair and reasonable criteria".	Finland, p. 13 Turkey, p. 18	Ukraine 2012, p. 18 Azerbaijan 2013, p. 13
	Measures to limit spending on elections should be considered. However, candidates must be allowed to run an effective campaign.	Estonia, p. 13 Finland, p. 12	Belarus 2010, p. 11 Moldova 2014, p. 12
	Parties should be required to keep proper accounts, which must be presented at least on an annual basis to an independent oversight authority and published.	Ireland, p. 22 Norway, p. 20 Slovakia, p. 20 United Kingdom, p. 24	Georgia 2012, p. 14
	All donations (financial and in-kind) should be recorded in accounts including the sources of funding as well as amounts of contributions. However, the privacy of donors needs to be protected.	Albania, p. 20 Denmark, p. 13 Finland, p. 14 Norway, p. 21 Slovenia, p. 25	Georgia 2012, p. 16 Armenia 2013, p. 12

Campaign financing	Parties should be required to keep records of all expenditure, direct and indirect, on election campaigns for each party, candidate list and candidate.	France, p. 26 Ireland, p. 24 Latvia, p. 19 United States, p. 33	Armenia 2012, p. 27
	Reports should include information on all entities that are related, directly or indirectly, to a political party or are otherwise under the control of a political party.	Denmark, p. 13 Estonia, p.15 France, p. 26 Slovenia, p. 25 Spain, p. 17	
	Parties should be required to make their accounts public at least annually in a comprehensible and accessible manner.	Belgium, p. 21 Germany, p. 21 Poland, p. 25 Slovakia, p. 20	
	The reports should be required within 30 days of election day and they should be made publicly available on the internet.	Czech Republic, p. 18 Iceland, p. 15	Belarus 2012, p. 12 Ukraine 2012, p. 18 Georgia 2013, p. 13
	Monitoring and oversight of the accounts of political parties and election campaigns, and enforcement of regulations in cases of violations, should be ensured by an independent monitoring body.	Czech Republic, p. 20 Moldova, p. 22-4 Slovenia, p. 28	Georgia 2012, p. 15 Azerbaijan 2013, p. 13. Moldova 2014, p. 13

7. MEDIA COVERAGE OF THE ELECTIONS

The media play an essential role in democratic societies since they contribute fundamentally to the formation of public opinion and help to control the distribution of power, thus strengthening democracies. During elections, media inform the public about the electoral process, analyse the campaign, provide platforms for electoral stakeholders and exert a controlling role. Therefore, the media play a key role to enable voters to make an informed choice. This requires fair, impartial and comprehensive media coverage of elections in the form of timely, accurate and unbiased reports.

The following sections deal with the underlying conditions of the media's freedom in elections, the required fair and impartial media coverage, and underrepresented groups and their specific needs.

a. Freedom of the media in elections

The precondition for pluralistic and fair information on elections is the media's ability to work in a free and unhindered manner. In particular, this comprises the state's guarantee of freedom of expression and other fundamental rights to the media as well as a neutral attitude on the part of state authorities towards media coverage of elections, especially by publicly owned media (Venice Commission 2002: Guidelines, sections I.2.3.a.ii, II.1.a; Committee of Ministers 2007a: para I.1, II.1).

Freedom of expression in elections and related rights

The freedom of expression enshrined in Article 10 of the Convention is one of the fundamental freedoms essential to any democratic society and must be granted to the media – including online media – and its representatives. This entails free, non-discriminatory and broad access to information about the electoral process and the ability to report from confidential sources without any interference by state authorities, which should not ask journalists to register or to possess a licence (UN Human Rights Committee 1981-2014: GC 34, paras. 43-5). Voters must be guaranteed the right to receive media output (*ibid.*: para. 13). The media and citizens should be given the right to an effective and timely remedy if their rights are infringed upon (International IDEA 2014a: 202).

However, freedom of expression can be limited, according to Article 10(2) of the Convention, assuming that restrictions:

are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Consequently, the media are also obliged to respect the rights of others. In some countries, this means a prohibition on releasing opinion polls for a limited period, until polling is completed or during the campaign silence period (Committee of Ministers 2007a: para. I.7). This can only be justified in order to allow voters to form their opinion without pressure or undue influence (International IDEA 2014a: 230).



Defamation and insult (the Court's case law)

Facts: the applicant in this case was the manager of a large circulation daily newspaper that in 1993 published an editorial criticising the Popular Party's choice of a particular candidate to stand in the Lisbon City Council elections. The Lisbon Court of Appeal held that certain expressions used by the applicant such as "grotesque", "buffoonish" and "coarse" were plain insults exceeding the limits of freedom of expression. The applicant was eventually convicted on charges of criminal libel and ordered to pay a fine, damages and costs.

Law: the Court reiterated that "[f]reedom of expression constitutes one of the essential foundations of a democratic society" and that it was "applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb". It noted further that "the limits of acceptable criticism ... are wider with regard to a politician acting in his public capacity", who "inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large". This applies "especially when he himself makes public statements that are susceptible of criticism". The Court stated that the personal tone of "political invective often spills over into the personal sphere; such are the hazards of politics and the free debate of ideas". It stressed that journalists may resort "to a degree of exaggeration or even provocation".

Conclusion: violation of Article 10 (freedom of expression).

Source: *Lopes Gomes da Silva v. Portugal* (28 December 2000).

[http://hudoc.echr.coe.int/eng#{\"itemid\":\[\"001-58817\"\]}](http://hudoc.echr.coe.int/eng#{\)

Additionally, media coverage of elections evoking national, racial or religious hatred should be prohibited in line with Article 20(1) of the ICCPR and appropriate sanctions should apply in case of violations. On the other hand, in a pluralistic society there is a certain degree of tolerance with regard to provocative speech especially affecting government authorities, elected officials and contestants (Venice Commission 2002: Explanatory Report, para. 61). Even if offensive, shocking or disturbing, it should not be inhibited or sanctioned. In particular, claims of defamation should not be abused to suppress criticism of the government or its institutions (UN Human Rights Committee 1981-2014: GC 34, paras. 38, 42, 47).

The limits of freedom of expression with regard to defamation and insult are concretised by the Court in its judgment on the case *Lopes Gomes da Silva v. Portugal* of 28 December 2000.

Should these limits be exceeded in individual cases, the sanctions for defamation must be proportionate, applying only to the most serious cases, and imprisonment is never appropriate (UN Human Rights Committee 1981-2014: GC 34, para. 47).

Free movement and security of journalists

Furthermore, media representatives should be guaranteed freedom of movement during the electoral process, to be restricted only under objective, reasonable and non-discriminatory criteria (*ibid.*: para. 44), for instance with regard to the accreditation of journalists for campaign events due to capacity limits.

Closely linked to the freedom of seeking and receiving information is the security of the person. This comprises the right of journalists to be free from physical and emotional violence as well as from arbitrary detentions or arrests preventing them from reporting on the electoral process, and legal provisions should provide appropriate forms of redress in case of any violation (ibid.: para. 23). In fact, states have a positive obligation to protect a journalist's freedom of expression against attacks (Committee of Ministers 2007a: para. I.2).

Neutral attitude of state authorities and media pluralism

To ensure editorial freedom, state authorities should exercise a neutral attitude towards the contents of media coverage of elections (Venice Commission 2002: Guidelines, section I.3.1.a.i). Public authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing the elections (Committee of Ministers 2007a: para. IV.1). The state should refrain from measures that may have a chilling effect or indirectly evoke self-censorship, for example by making repeated accusations in response to the publication of certain articles, authorising unjustified tax inspections or disrupting supplies for newspapers (OSCE/ODIHR 2003b: 97; UN Human Rights Committee 1981-2014: GC 32, para. 63).

Publicly owned media, too, must be guaranteed editorial freedom and independence. Government officials should not abuse resources or their influence to exert control over media content; linked to this, sufficient funding should be provided (UN Human Rights Committee 1981-2014: GC 34, para. 16). Particularly, the state must not have a media monopoly and should promote pluralism (ibid.: 40), recalling that the diversity of media types and content is central to media pluralism (Committee of Ministers 1999). Only in these conditions are voters able to receive various kinds of information, enhancing their ability to form an informed opinion.

The existence of a high number of state-controlled media outlets was criticised in the OSCE/ODIHR Election Observation Mission's Final Report on the 2010 Presidential Election in Belarus.

Equally, states should prevent undue media dominance or concentration by privately controlled media groups in monopolistic situations that may be harmful to a diversity of sources and views (UN Human Rights Committee 1981-2014: GC 34, para. 40). The entire structure of media ownership should be transparent in order to enable people to



Lack of independent media (Belarus)

The Election Observation Mission noted that despite a high number of officially declared media outlets, there was "a general lack of independent and objective reporting. The scarcity of alternative information sources significantly reduced the possibility for voters to make an informed choice during the election. ... The state controls all nationwide broadcast outlets as well as the distribution networks for print media. The expression of alternative views on political developments is thus confined to a few private newspapers and the Internet".

Source: OSCE/ODIHR EOM to Belarus, Presidential Election 2010, Final Report, p. 12.

www.osce.org/odihr/elections/75713?download=true

understand potential biases in their information sources (Committee of Ministers 1994: Guideline 1).

b. Broadcast media coverage of the elections

Media coverage of the electoral process by the main segments of a country's media sector, including radio, television, newspapers and the internet, is essential for voters to be adequately informed of the electoral contestants' programmes and opinions. To grant this universally, media should take steps to reach all parts of society, including those living in rural areas (The Carter Center 2014: 140). Since broadcasting media are still the most popular sources for information on the electoral process, they are discussed in the following sub-sections.

Fair, balanced and impartial coverage

Both publicly and privately owned broadcasting media, though granted editorial freedom, should be obliged to cover elections in a fair, balanced and impartial manner, in particular in their news and current affairs programmes, including discussion formats such as interviews and debates (Committee of Ministers 2007a: paras. II.1, 2; Venice Commission/OSCE/ODIHR 2009). The role of the media is to persistently monitor whether the authorities are ensuring a democratic election process. Since the media have an important task in helping the voters understand the key issues of the election, they are also expected to reflect on, describe and analyse this process. Accurate and balanced coverage comprises different types of broadcasting formats, such as the open questioning of candidates and political parties, debates between candidates and the presentation of direct statements, instead of mere commentary on a candidate, and the dedication of equal amounts of airtime.

A negative example thereto can be found in the Final Report of the OSCE/ODIHR EOM to the 2013 Presidential Election in Azerbaijan.

Further, biases or manipulations, for instance the omission of stories that would have a negative or positive impact on a candidate, presenting partisan or private interests as



Inaccurate and preferential coverage of elections (Azerbaijan)

The media monitoring findings of the EOM "revealed limited coverage of candidates and a lack of pluralism. The monitored television channels, including ITV [public broadcaster], provided a total of 15 hours 44 minutes of coverage in their primetime news programmes; an average of some 7 minutes per day. Of this, 92 per cent was dedicated to the incumbent President, with the rest to the remaining nine candidates. Coverage tended to focus on information regarding the technical aspects of the election. None of the monitored television stations broadcast programmes that provided an opportunity for journalists, experts or the public to put questions to candidates (including the incumbent) or for candidates to debate with each other".

Source: OSCE/ODIHR EOM to Azerbaijan, Presidential Election 2013, Final Report, p. 16.

www.osce.org/institutions/110015?download=true

news, or the use of sound effects to promote or diminish a candidate, should be avoided (OSCE/ODIHR 2003b: 94). News coverage of the government or the incumbent, though admissible during campaign periods, should not be abused via privileged treatment of public authorities (Committee of Ministers 2007a: para. II.2).

Regulatory bodies

Election or media law should encompass clear provisions for media coverage of the elections. In case of violations of these provisions, expedited and specific remedies should be provided (Venice Commission 2002: Explanatory Report, para. 19). For this, states may establish an independent regulatory body that oversees broadcasting media's compliance with the legal framework, regulates broadcasting itself and has the power to impose sanctions in case of non-compliance (The Carter Center 2014: 135). This body should be independent from political interests, especially in the appointment of its members and functioning, as well as transparent in its structures and decisions (UN Human Rights Committee 1981-2014: GC 34, para. 39). It should deal with complaints in a timely manner. The media may also establish self-regulatory bodies to ensure compliance with the legal framework either industry-wide or in-house and journalists may agree on codes of ethics implementing quality-preserving and transparency-enhancing self-commitments (OSCE 2008: 10, 22).

The need for a regulatory body is exemplified by the Final Report of the OSCE/ODIHR Election Observation Mission's to the 2014 Parliamentary Elections in Moldova.

Provisions for publicly owned media

Public service media should provide adequate information about the democratic system and democratic procedures. Accordingly, one of its roles should be to foster citizens'



Media regulatory body (Moldova)

The Election Observation Mission noted preferential treatment of the ruling party by various television broadcasters, including the most popular TV channels: "Prime TV and Publika TV showed clear bias in favour of the Democratic Party of Moldova (PDM), both in amount of airtime and tone, devoting to it 36 per cent each of almost exclusively positive and neutral information. In addition, PDM campaign reports were often presented outside the special bloc dedicated to election coverage. Numerous news reports promoted the activities of the speaker of the parliament, also a PDM candidate."

However, as assessed by the EOM, the media regulatory body (CCA) did not restore media compliance with the legal requirement to ensure balance, impartiality and accuracy in their news programmes: "during its last pre-election session before election day, the CCA chose not to apply further, more severe sanctions, despite the findings of its fourth monitoring report that revealed repeated unbalanced coverage by some broadcasters". This "[f]ailure of the CCA to apply sanctions in an adequate and consistent manner detracted from their overall value as a remedy, and questioned the independence of the overseeing authority".

Source: OSCE/ODIHR EOM to Moldova, Parliamentary Elections 2014, Final Report, pp. 16-18.

www.osce.org/odihr/elections/moldova/144196?download=true

interest in public affairs and encourage them to play a more active part (Committee of Ministers 2007b: para. II.15).

Particularly, publicly owned media should meet certain obligations in order to grant candidates equality of opportunity. They can be obliged to provide free airtime and space during election periods, to be allotted on a non-discriminatory basis under a formula established by law that can be applied objectively (OSCE 1990a: para. 7.8; International IDEA 2014a: 202, 229). Equal distribution can be ensured either proportionally, according to the number of seats political parties hold in parliament or their results in recent elections, or strictly, that is irrespective of their parliamentary strength (Venice Commission 2002: Guidelines, section I.2.3.b). This encompasses the amount of free airtime or space provided and its timing or location, including during peak viewing or listening periods (OHCHR 1994: para. 121; International IDEA 2014a: 229). The amount of airtime distributed should be sufficient to enable all contestants to compete effectively and for voters to gain sufficient information.

Last but not least, publicly owned media can be obliged to air voter education programmes. There is no provision for this in international treaties but in this way states can meet their obligation to give effect to the right to vote, as enshrined in several treaties (International IDEA 2014a: 230).

Provisions for private media

Concerning private media, the law should encourage the pluralistic expression of opinions, ensure minimum access for candidates and oblige private broadcasters to cover election campaigns in a fair and impartial manner (Committee of Ministers 2007a: para II.1, 2; International IDEA 2014a: 202, 229; Venice Commission 2002: Guidelines, section I.2.3.c). However, being legally obliged to provide free airtime for contestants may infringe on private broadcasters' editorial freedom.⁸

Political advertising in broadcast media

Open access and equal treatment should also be guaranteed with regard to political advertising if this is allowed, including equal costs for all candidates (Committee of Ministers 2007a: para II.5), which should not be so high as to affect them prohibitively or discriminatorily. Especially in countries with a history of state-owned broadcast media that provide preferential treatment to the ruling party, paid political advertising can be an important means for opposition candidates to present their messages. Yet it should be identified as such and must not be confused with news or editorial content (International IDEA 2014a: 229). To ensure equal opportunity of candidates, spending on advertising can be limited (Venice Commission 2002: Guidelines, section I.2.3.e).

8. OSCE/ODIHR EOM to Moldova, Parliamentary Elections 2014, Final Report, p. 15, available at www.osce.org/odihr/elections/moldova/144196?download=true, accessed 21 July 2016.

c. Measures for underrepresented groups

Every contestant should have access to the media without discrimination, according to Article 14 of the Convention, regardless of his or her sex, a disability or his or her status as a minority member, displaced person, refugee. Furthermore, for traditionally underrepresented groups, special measures can temporarily apply to increase their presence in the media.

Particularly, it should be ensured that male and female candidates receive equal coverage and visibility in the media. In fact, women candidates consistently have less prominence in election coverage in all forms of media, and women's issues and concerns often do not appear as topics for discussion and comment during electoral campaigns.

An example was noted in the OSCE/ODIHR Election Observation Mission's Final Report on the 2012 Parliamentary Elections in Armenia.

Additionally, media should cover female candidates in a non-discriminatory manner regarding images selected as well as the tone and language used. Regulatory bodies should promote gender equality in their composition to engage women in their decision-making processes (Committee of Ministers 2013: Guidelines A.1, B.4).

In areas with a certain population of national minorities, media coverage of the election campaign should be provided in minority languages (OSCE/ODIHR 2003b: 93).

To enable persons with disabilities to take part in political and public life, electoral information provided by the media should be accessible, including offers in sign language, "easy to read and understand" information and information in alternative formats (Council of Europe 2015: 15, 21). Such offers should also take into account public and private websites (ibid.: 23).



Female candidates in the media (Armenia)

"OSCE/ODIHR EOM media monitoring found that H1 devoted 4 per cent of its election-related news programs to female candidates and party representatives, and public radio 5 per cent. This is disproportionately low, given that around 21 per cent of all registered candidates were female, and given Armenia's stated target of 30 per cent women in the legislature."

The EOM therefore recommended: "The public media should ensure that women are not under-represented in their coverage and could undertake temporary special measures (such as giving additional airtime to female candidates, requesting parties to nominate female candidates for interviews, airing programs on women in politics) to promote women's political participation."

Source: OSCE/ODIHR EOM to Armenia, Parliamentary Elections 2012, Final Report, pp. 17, 28.

www.osce.org/odihr/elections/91643?download=true

	Media coverage of the elections (standards and good practices)	OSCE/ODIHR EOM Reference (final reports)
Free and unhindered media	The legal framework should ensure freedom of expression in line with international standards.	Belarus 2012, p. 13 Azerbaijan 2013, p. 6
	States should consider the decriminalisation of defamation and the publication of untrue statements in error but without malice. The criminal law should only be applied in the most serious cases and imprisonment is never appropriate.	Belarus 2012, p. 13 Azerbaijan 2013, p. 14
	Free, uncensored and unhindered media are essential in any society to ensure freedom of opinion and expression.	Belarus 2012, p. 13 Moldova 2014, p. 14 Ukraine May 2014, p. 19
	There should be no state monopoly over the media. The state should promote media pluralism and take appropriate action to prevent undue media dominance or concentration by privately controlled media groups.	Ukraine 2012, p. 19 Moldova 2014, p. 14 Moldova 2015, p. 15
	Public broadcasting services should operate in an independent manner and with editorial freedom. They should be provided with sufficient funding.	Ukraine 2012, p. 20 Moldova 2014, p. 16
	States should adopt laws to give effect to the rights recognised and to guarantee an accessible and effective remedy for all individuals whose rights have been infringed on.	Armenia 2012, p. 27 Moldova 2014, p. 18 Ukraine May 2014, p. 19
	Supervisory bodies should have a pluralistic composition, be independent and supervise the implementation of the law adequately and effectively, including the ability to sanction media representatives in case of violations.	Belarus 2012, p. 14 Georgia 2012, p. 19 Moldova 2014, p. 17 Moldova 2015, p. 16

	Media coverage of the elections (standards and good practices) (cont.)	OSCE/ODIHR EOM Reference (final reports)
Balanced and unbiased media coverage	Media outlets could be encouraged to take self-regulatory measures to ensure impartial and diverse coverage.	Moldova 2014, p. 17
	There should be unimpeded access to the media on a non-discriminatory basis. Independent candidates should be treated in an inclusive manner.	Belarus 2012, p. 14 Georgia 2013, p. 14
	The broadcasting media should report on campaigning of all candidates in an impartial and balanced way.	Belarus 2012, p. 15 Armenia 2013, p.15
	Media coverage should comprise news coverage, interviews, debates/talk shows and analytical reporting.	Azerbaijan 2013, p. 14 Georgia 2013, p. 14
	News coverage of the incumbent should distinguish between his or her official duties and campaign activities.	Georgia 2012, p. 20 Armenia 2013, p. 16
	Prices for paid advertising should not be overly high.	Georgia 2012, p. 18
	Paid political advertising should be clearly distinguished from news coverage.	Armenia 2012, p. 16 Ukraine May 2014, p. 21 Moldova 2015, p. 16
Special measures	Public media should ensure that female candidates are not underrepresented in their coverage.	Armenia 2012, p. 17, 22 Moldova 2015, p. 17

8. VOTING – TYPES OF VOTING

Voting is the phase of elections during which the largest number of individuals in a country exercises the right and opportunity to participate in public affairs. The conduct of voting, particularly with regard to its transparency, influences strongly public confidence in the electoral process and acceptance of the results. Every step of the voting process should consequently be open to the scrutiny of the political contestants, their proxies and election observers (Venice Commission 2002: Guidelines, section I.3.2.x). The fundamental objective must be to ensure the free exercise of the right to vote. This entails the impartiality of observers. Additionally, all prerequisites for this election phase must be addressed by detailed provisions: the voting form, printing and secure distribution of ballots, the manner of their casting as well as the type of voting (OHCHR 1994: para. 109). Expedited and timely appeals should apply in case of any infringement, particularly against decisions taken at polling station level (International IDEA 2014a: 248).

In the following sub-sections voting in polling stations, other types of voting and voters with specific needs are considered.

a. Voting in a polling station

Generally, voting should always be possible in polling stations that are sufficiently equipped and staffed (Venice Commission 2002: Guidelines, section I.3.2.ii; The Carter Center 2014: 150). Regulations must address the voting facilities, polling station staff and voting material. Further, the role of the voter and the security of the whole process are crucial.

Voting facilities

States must provide suitable polling sites in public places that are easily and equally accessible for voters (Venice Commission 2002: Explanatory Report, para. 27; The Carter Center 2014: 150) with regard to geographical conditions and existing transportation means. Freedom of movement must be guaranteed so that voters are able to reach their polling station, and the number of polling stations should be proportionate to the size of the electorate (The Carter Center 2014: 150). According to the European Commission, “[t]he number of voters designated to a polling station is considered reasonable when the total number of votes cast can be processed effectively during the time available, if all [registered] voters participated” (2008: 75).

Polling stations must provide sufficient space to accommodate all voters and should be structured in a manner that allows full visibility of the setting except for the voting booths. Voters should be able to pass unhindered each step from the identification desk and the place where they receive their ballot paper to the voting booths and the ballot box (OSCE/ODIHR 2003a: 72).

Polling facilities should be kept open during a time fixed by law that should be the same for all voters. Polls should open on time and not close too early to allow as many voters as possible to cast their vote. People waiting in line when the polls close should be allowed to vote (The Carter Center 2014: 150).

Polling station staff

Polling staff should be required to attend training that emphasises their task and their duty to act impartially (European Commission 2008: 75).

As a safeguard against electoral fraud, the team of polling staff should be composed in a balanced way with regard to political opinions (Venice Commission 2002: Explanatory Report, para. 32). Additionally, polling staff should ensure that ballot boxes are empty and sealed at the beginning of voting and all unused ballot papers should be recognised and secured while transporting and storing them (OSCE/ODIHR 2010: 73; Venice Commission 2002: Explanatory Report, para. 33). Polling staff should ensure that unused ballot papers never leave the polling station (ibid.: Guidelines, section I.3.2.ix). They should assess the accuracy of the vote cast's outcome by recording the number of voters and the number of ballot papers placed in the ballot box. Other numbers should not be recorded unless this can be done accurately, in order to grant strict and effective control (ibid.: Explanatory Report, para. 32). In order to prevent double voting, measures such as marking the voter register, asking the voter to sign the register, or marking his or her finger with ink may apply (European Commission 2008: 76) and should be implemented methodically.

Examples of fraudulent practices and irregularities are listed in the OSCE/ODIHR Election Observation Mission's Final Report on the 2012 Parliamentary Elections in Belarus.

Voting material

Voting material includes the equipment of a polling station such as the ballot boxes, voting screens and information material on voting as well as, in particular, the ballot paper. There has to be sufficient and pre-approved material in place, which has to be safeguarded before, during and after voting in order to ensure the free expression of the electorate's will (International IDEA 2014a: 238).

With regard to the ballot paper, it is important that it bears the names of registered lists or candidates (Venice Commission 2002: Explanatory Report, para. 27) printed in equal size and in a fairly determined order, for example, by drawing lots. However, the ballot paper should be designed as simply as possible and easy for voters to fill out to avoid confusion and a delay in voting. The use of symbols or photographs to represent candidates or parties is practised in many countries and may be useful in areas with a high level of illiteracy. There should be enough ballot papers for all registered



Fraudulent practices and irregularities occurring in polling stations (Belarus)

The EOM observed "problems and irregularities" such as "seemingly identical signatures in voters' lists (6 per cent), the ballot box for early voting not being placed in clear view of Precinct Election Commission (PEC) members and observers (13 per cent), ballot boxes not being properly sealed (5 per cent), and indications of ballot box stuffing in 3 polling stations".

Source: OSCE/ODIHR EOM to Belarus, Parliamentary Elections 2012, Final Report, p. 19.

www.osce.org/odihr/elections/98146?download=true

voters and extra ballot papers as a contingency, for example, to replace spoiled ballots. Voters should receive the number of ballot papers to which they are entitled, and which is the same for all voters.

Voters

In order to allow the voter to freely express his or her will and to ensure that voting procedures are consistent with the voting principles, they have to meet certain criteria and should be kept as simple as possible (*ibid.*: Guidelines, section I.3.2.i; International IDEA 2014a: 239).

Firstly, the legal framework on voting should clearly ensure the vote's secrecy and security to shield voters from pressure they might face if their vote were known and undue control over their choice (OHCHR 1966: Article 25(b); Venice Commission 2002: Guidelines, section I.4.b; UN Human Rights Committee 1981-2014: GC 25, para. 20). This means that the two steps of identifying qualified voters and voting and casting the ballot must be kept separate to prevent the possibility of a link being drawn between the voter's choice and his or her identity (International IDEA 2014a: 238). If the voter has collected his or her ballot paper no one else should touch it from that point on and no one is allowed to see the marked ballot until counting takes place (*ibid.*; Venice Commission 2002: Explanatory Report, para. 35). Any violation of the secrecy of the ballot should be punished, for example by disqualifying the ballot the content of which has been disclosed (*ibid.*: Guidelines, section I.4.a).

A high risk of undue influence and non-compliance with the secrecy of the ballot occurs with so-called proxy voting, which allows the delegation of someone's voting power to other voters (proxies) because of his or her inability to attend voting in a regular voting place. This should only be allowed for specific circumstances under very strict rules, including a limit to the number of proxies per voter (*ibid.*: section I.3.2.v).

Additionally, all forms of family or group voting should be contested as they infringe on the right to vote secretly and individually. Family voting often affects women and may happen in three ways: in group voting, where a male family member accompanies one or more women relatives into a polling booth; in open voting, when family groups vote together; or in the form of proxy voting, where a male family member collects the ballot papers that rightfully belong to one or more women relatives and marks those papers as he sees fit (Venice Commission 2006a: section b).

Instances of family voting were noted in the OSCE/ODIHR Election Observation Mission's Final Report on the 2012 Parliamentary Elections in Armenia.

In another instance, the OSCE/ODIHR Election Observation Mission to the 2013 Presidential Election in Azerbaijan in its Final Report noted examples of various infringements of the secrecy of the vote.

That voting has to be as inclusive as possible has already been discussed in the section on voter registration. Voting can be compulsory in order to grant universal suffrage. In countries where it is not compulsory, voters must be allowed to not vote without facing retribution or punishment (European Commission 2008: 75). Since abstention from voting can indicate a political choice, lists of people actually voting should not be published to maintain the secrecy of people's choices.



Family voting (Armenia)

The EOM observed a number of serious violations to the secrecy and individuality of the vote including family voting. It explained: "Issues of intimidation and compromised secrecy of the vote are generally regarded as having a greater impact on female voters, as more powerful male family and community members can use their enhanced position to pressure women whom to vote for." Further, it criticised the fact that "[n]o additional measures, such as increased protection of the secrecy of the vote and additional voter education and outreach to women voters, were taken by the CEC to prevent men from influencing women's votes".

Source: OSCE/ODIHR EOM to Armenia, Parliamentary Election 2012, Final Report, p. 21.

www.osce.org/odihr/elections/91643?download=true



Infringements of the secrecy of the vote (Azerbaijan)

The EOM reported that "[i]n 9 per cent of polling stations observed, not all voters marked their ballot in secrecy. IEOM observers noted group voting in 7 per cent of polling stations observed. In 16 polling stations they observed the same person 'assisting' numerous voters, potentially undermining the secrecy of the vote. In 8 per cent of those polling stations visited that had cameras connected to the internet installed, IEOM observers assessed that their placement did not completely safeguard the secrecy of the vote".

Source: OSCE/ODIHR EOM to Azerbaijan, Presidential Election 2013, Final Report, p. 21.

www.osce.org/institutions/110015?download=true

Security of the voting process

Voters and polling officials must be protected from intimidation or coercive influence by state authorities or individuals (Venice Commission 2002: Explanatory Report, para. 27; OSCE/ODIHR 2003a: para. 8.5; UN Human Rights Committee 1981-2014: GC 25, para. 11). Polling officials are responsible for keeping order in the polling station and, as far as possible, in its immediate environment (OSCE/ODIHR 2003a: para. 8.5). Police and security forces should only enter polling stations to vote themselves or, on the request of polling station officials, to restore order in a concrete event of disturbance (International IDEA 2014a: 239). Only the presiding polling officer or his or her representative should be authorised to let police intervene. (Venice Commission 2002: Explanatory Report, para. 112). Although the presence of security personnel or police in polling stations is common in some countries, this can only be admissible as long as voters are not unduly influenced or intimidated (OHCHR 1994: paras. 94, 97).

The maintenance of order in polling stations and their security was highlighted in the OSCE/ODIHR Election Observation Mission's Final Report on the 2013 Presidential Election in Armenia.



Maintenance of order and security (Armenia)

The EOM noted: "Observers reported overcrowding inside 51 stations observed (5 per cent), large groups of voters waiting outside 77 stations (8 per cent), and tension or unrest at 18 stations (2 per cent). They also reported 64 cases (7 per cent of observations) where unauthorized people, mostly proxies, interfered in or directed the work of the PECs. Observers reported 9 cases of people inside stations attempting to influence voters who to vote for, as well as 30 cases of pressure on or intimidation of voters outside stations."

It therefore recommended: "Further steps should be taken to address the persistent problem of interference in the electoral process by unauthorized people. Overcrowding of polling stations and Territorial Election Commissions (TEC) should be addressed, for example by identifying sufficiently large premises and by more efficient control over who is inside these premises."

Source: OSCE/ODIHR EOM to Armenia, Presidential Election 2013, Final Report, p. 21.

www.osce.org/odihr/elections/101314?download=true

b. Other types of voting

States can consider special voting procedures or voting in other locations that can take place in advance of election day and supplement voting in polling stations, to facilitate voting and thus contribute to broad participation in elections in the sense of universal suffrage (OSCE/ODIHR 2003a: para. 8.10; International IDEA 2014a: 142). They should clearly define the conditions for those procedures, which must comprise safeguards against multiple voting and undue influence of voters (International IDEA 2014a: 239).

Through postal voting, voters are allowed to cast their ballot in advance of election day. In some jurisdictions postal voting is not allowed because the secrecy of the vote cannot be guaranteed (ibid.: 240). In any case, it should only be admissible if the postal service is safe from intentional interferences, is reliable, and the jurisdiction in question does not have a history of family voting or other trends that result in voters controlling the vote of another voter (Venice Commission 2002: Guidelines, section I.3.2.iii, Explanatory Report, para. 39).

Electronic voting or e-voting is a relatively new voting technology that can enhance voter participation and provide for faster counting that is less prone to human error, as well as being more cost-effective. However, the use of e-voting may raise serious concerns over the transparency of the voting process, that is the traceability of an individual's vote (European Commission 2008: 84). According to the Code of Good Practice and the Committee of Minister's Recommendation Rec(2004)11, state authorities should hence ensure that e-voting technologies applied function correctly, safely and reliably. In particular, it must be possible during voting to check whether the system is functioning properly; it should withstand breakdowns, malfunction and deliberate attacks.

Several shortcomings were noted by the OSCE/ODIHR Election Observation Mission's Final Report on the 2014 Parliamentary Elections in Moldova.

Furthermore, an e-voting system must ensure the secrecy of the vote, that is never link the voter's identity with his or her vote, and be sufficiently secure against fraud. Its interface must be designed in a clear, non-confusing way. The voter should be able



Shortcomings related to electronic list of voters (Moldova)

The EOM observed: "Upon opening, the SAISE [State Automated Information System 'Elections'] was operational in 95 per cent of precincts observed. However, later that morning, the system stopped functioning. According to the CEC, its server network went down due to an overload of requests from Precinct Election Bureaus (PEB). The SAISE did not function during 59 per cent of the visits by the observers. As a result of this significant technical problem, voters' data was initially processed manually by PEBs, and then subsequently added to the electronic system."

Source: OSCE/ODIHR EOM to Moldova, Parliamentary Elections 2014, Final Report, p. 22.

www.osce.org/odihr/elections/moldova/144196?download=true

to correct her/his choice before casting the ballot, should be aware when her/his vote has been cast and should receive a confirmation of the vote. To facilitate verification and a recount in the case of appeals, it might be possible to print the votes onto a ballot paper that is then placed in a sealed container.

Further voting types are linked to special voting sites such as so-called mobile voting, which either takes place on election day or less often, in advance. In that case, polling officials visit homebound voters with a mobile ballot box. However, this method bears a high risk of fraud so it should only be admissible if strict safeguards apply (Venice Commission 2002: Guidelines, section I.3.2.vi).

An example of mobile voting and its risks can be found in the Final Report of the OSCE/ODIHR Election Observation Mission to the 2012 Parliamentary Elections in Belarus.

Military voting concerns voting by military personnel, who should be able to vote at their place of residence or at a designated local polling station near their barracks (Venice Commission 2002: Guidelines, section I.3.2.xi). Only if this not possible because the barracks are too far from the nearest polling station should members of the armed forces be asked to vote at their place of deployment. However, military personnel must not be intimidated or coerced to vote in a certain way by their superiors (ibid.: Explanatory Report, para. 41).

States can allow out-of-country voting for expatriate citizens (International IDEA 2014a: 240), which can take place at special polling stations such as a country's embassy, or through the post.



Inaccuracies in mobile voting procedures (Belarus)

The EOM noted: "The electoral code provides for mobile voting for those unable to visit a polling station in person regardless of the reason. In some precincts, more than one third of voters casting their ballot on election day used mobile voting. Ballot boxes for mobile voting were not securely sealed in 94 per cent of cases, and there were indications of ballot box stuffing of the mobile voting ballot boxes in five polling stations observed."

It therefore suggested: "Mobile voting could be limited to homebound voters with a compelling reason. These voters could be required to file a motivated request in advance of election day."

Source: OSCE/ODIHR EOM to Belarus, Parliamentary Elections 2012, Final Report, p. 19.

www.osce.org/odihr/elections/98146?download=true

c. Voters with specific needs

Voting should take place without any discrimination on prohibited grounds, as specified by Article 14 of the Convention. However, special measures can (temporarily) apply where voters have specific needs.

States should grant voters with disabilities the right and possibility to vote on an equal basis with others, that is secretly and individually by marking their ballot directly without any intimidation (*ibid.*: 141). Hence the voting procedure, facilities and their layout as well as materials should be appropriate, accessible and easy to understand and use (UN 2006: Article 29(a)(i)). This can also comprise the usage of auxiliary and new technologies where appropriate, such as e-voting technologies or Braille (*ibid.*: Article 29(a)(ii); Committee of Ministers 2004: para. 3; International IDEA 2014a: 142). The only exception to the right (and duty) of voters to the secrecy of the ballot is when a voter who is not able to vote independently requires personal assistance (International IDEA 2014a: 239). This should be executed impartially by someone of the voter's own choice or by another person chosen in a neutral manner, for example an official assistant provided by the EA, who shall be obliged under threat of punishment to respect the intent of the voter and the secrecy of his or her vote (*ibid.*: 142; UN 2006: Article 29(a)(iii); The Carter Center 2014: 151). Voters with disabilities should be made aware of the opportunity of assisted voting (UN Human Rights Committee 1981-2014: GC 25, para. 20).

Election material, including ballot papers, should be translated into minority languages in multilingual societies (*ibid.*: para. 12; OSCE/ODIHR 2010: 54). If translated, ballot papers must be identical in their content in every language (OHCHR 1994: para. 110). In minority areas, too, enough polling stations must be provided and equal access must be guaranteed to members of minorities (International IDEA 2014a: 247).

IDPs who were displaced in advance of voting should be able to return to the place where they are registered to cast their ballot (OHCHR 2004: Principle 22(d)). Furthermore, refugees should be able to return to their country to vote (OHCHR 1966: Article 12(4)).

	Voting (standards and good practices)	OSCE/ODIHR EOM Reference (final reports)
Voting in a polling station	The voting procedure must be kept simple.	Georgia 2013, p. 21
	The state must provide the necessary premises for voting.	Armenia 2013, p. 21 Moldova 2014, p. 22
	Polling stations must be sufficiently equipped and staffed.	Moldova 2014, p. 22 Ukraine May 2014, p. 26
	Election and information material must be present.	Armenia 2013, p. 21
	The voting process must ensure that voters are able to cast their votes as they wish without having to face retribution, coercion or intimidation, either from the authorities or from individuals.	Armenia 2013, p. 20 Ukraine May 2014, p. 25
	The secrecy of the ballot must be observed during the entire voting procedure, particularly during the casting of votes.	Azerbaijan 2013, p. 21 Moldova 2015, p. 21
	In particular, family voting infringes on the secrecy of the ballot and is a common violation of the electoral law.	Armenia 2012, p. 21
	Multiple voting and any control by one voter over another's vote must be prohibited.	Ukraine 2012, p. 27 Armenia 2013, p. 21
	Safeguards against electoral fraud and corruption should be imposed and implemented correctly.	Armenia 2012, p. 21 Azerbaijan 2013, p. 20
	Electoral fraud and corruption are more unlikely if the polling station officials represent different political groupings.	Ukraine 2012, p. 10 Azerbaijan 2013, p. 21

Voting in a polling station	In order to ensure the accuracy of results the number of voters and the number of ballot papers received at each polling station should be recorded.	Georgia 2013, p. 20
	Election observers and the contestants or their agents should be allowed to be present under the premise that they act impartially and refrain from interference.	Azerbaijan 2013, p. 21, 28 Georgia 2013, p. 20 Moldova 2015, p. 21
	Election day-related complaints should be considered immediately.	Armenia 2012, p. 22, 28
Other types of voting	Strict conditions and safeguards against fraud should be imposed for mobile voting, including sealing the ballot box and the attendance of several polling officials representing different political groupings.	Armenia 2012, p. 21 Belarus 2012, p. 19 Azerbaijan 2013, p. 21
	E-voting must be secure, reliable and transparent. It is important to ensure that e-voting systems are designed in a non-confusing way.	Moldova 2014, p. 22
	Polling stations should be accessible to voters with disabilities and their layout must be adequate.	Armenia 2013, p. 21 Moldova 2014, p. 22 Ukraine Oct. 2014, p. 26
Special measures	Positive measures should be taken to overcome illiteracy among voters.	Ukraine Oct. 2014, p. 22
	A sufficient number of ballot papers should be available in minority languages.	Moldova 2011, p. 21 Georgia 2012, p. 23
		Azerbaijan 2013, p. 19

9. COUNTING AND RESULTS MANAGEMENT

Vote counting and the tabulation of results are sensitive parts of the electoral process, since at this point the winners and losers of the electoral contest are determined. A balance has to be maintained between providing results in a timely manner and ensuring procedural accuracy aimed at respecting and establishing the voters' wishes. Inaccuracies and manipulations during this part of the electoral process can seriously undermine public confidence in the integrity of the entire electoral process and the acceptance of results. Transparency and access to information should accompany counting and tabulation procedures.

a. The vote count

Counting procedures should be regulated by a law that provides for a transparent, immediate, accurate, honest and secure count (European Commission 2008: 82; OSCE 1990a: para. 7.4). Particularly, there should be strict deadlines for the closing of polling stations, deadlines and conditions for the counting of advance votes (e.g. postal votes and electronic votes when the system closes before the end of the voting period, as is usually the case with internet voting), and well-defined conditions for the appointment of personnel in charge of the counting. The location where the counting takes place should be defined as well as procedures for reconciliation, the counting itself and transfer of the results. The procedures should be simple and tested well in advance and their application reflected in the manual for polling station staff (Venice Commission 2002: Explanatory Report, para. 48).

The vote count procedure can be separated into several steps, comprising the closing of voting and the counting itself, the recording of results as well as their transmission, and the transport of election material to the higher commissions. A special set of standards applies for the determination of the results of e-voting.

The closing of voting and the counting of votes

Counting should start immediately after the closing of a given polling station to reduce the risk of fraudulent interferences (European Commission 2008: 82). On the other hand, counting should not begin if any type of voting is still taking place. However, advanced votes may be counted prior to the end of the voting to speed up the tabulation of results provided that there are clear rules to protect the secrecy of the results until the voting period ends (Committee of Ministers 2004: para. 53).

Only authorised and trained staff should participate in the vote counting, which should be carried out in an atmosphere free from intimidation (European Commission 2008: 82). Universal suffrage demands that all votes cast be counted. There should be safeguards against electoral fraud and corruption as well as sanctions in case of violations of the electoral law (OHCHR 1994: para. 118).

Counting may be carried out on-site, that is at the polling station, or at a central location (European Commission 2008: 82). The latter may provide a more controlled environment and, in mixing ballot papers from different polling stations, address concerns that voters of individual polling stations might be punished for their vote. During the transfer to



Severe violations at the beginning of the counting procedure (Azerbaijan)

The EOM noted that “[a] significant proportion of PECs did not perform basic reconciliation procedures, such as counting the number of signatures on the voter lists (55 observations), determining the number of voters who voted using a DVC [de-registration voting card] (32 observations), and mandatory crosschecks (50 observations), which are essential to maintaining the integrity of the process. In 21 counts observed, the unused ballot papers were not cancelled prior to the opening of the ballot boxes. In 13 polling stations observed, the serial number of the seal was not identical to the number recorded during opening procedures; in 4 polling stations ballot box seals were not intact.”

Source: OSCE/ODIHR EOM to Azerbaijan, Parliamentary Elections 2013, Final Report, p. 22.

www.osce.org/institutions/110015?download=true

the counting centre, the ballot box must be properly sealed and permanently supervised. Party or candidate representatives and observers should be allowed to supervise the transport of the ballot box throughout the process (ibid.: 82). However, there is a high risk of electoral fraud when counting takes place outside the polling stations. For these reasons it is highly recommended that counting takes place at the polling station (Venice Commission 2002: Explanatory Report, para. 45).

After the closing of the vote, the ballot box should be promptly sealed and the unused, spoiled and returned ballot papers should be counted and subsequently secured or destroyed. Only after this should the sealed ballot box be opened (OSCE/ODIHR 2010: 80).

After the opening of the sealed ballot box, the number of ballots inside should be compared with the number of people who actually voted according to the voter list (ibid.). The ballot box should not contain more ballots than the registration of actually cast ballots reveals (European Commission 2008: 83).

Examples of non-compliances with these standards are listed in the OSCE/ODIHR Election Observation Mission’s Final Report on the 2013 Parliamentary Elections in Azerbaijan.

After reconciliation, the ballots for each candidate or party should be separated and individually counted (OSCE/ODIHR 2010: 81). The criteria determining the validity of a ballot must be clearly set by law (International IDEA 2014a: 251). In case of doubt as to whether a ballot is valid, officials should attempt to detect the voter’s intention (Venice Commission 2002: Explanatory Report, para. 49). If it is clearly recognisable, the ballot should be considered valid, given that there are no markings that could reveal the identity of the voter (European Commission 2008: 83). Invalid ballot papers should be kept separately and preserved for review (OSCE/ODIHR 2010: 81). In case of discrepancies at the end of counting, a narrow result or a high number of invalid votes, a recount may be immediately necessary (European Commission 2008: 83).

The process of counting should be transparent and open to public scrutiny, that is voters registered in the polling station, accredited observers, party or candidate and media representatives should be allowed to be present (Venice Commission 2002: Explanatory Report, para. 46; UN Human Rights Committee 1981-2014: GC 25, para. 20). This means that they have access to facilities and a full view of the counting process



Transparency and scrutiny of the counting process (Azerbaijan)

The EOM noted that “[t]he vote count often lacked transparency. IEOM observers reported that in 24 polling stations observed, they did not have a clear view of the counting procedures and in one third of counts observers were not able to clearly see how ballots had been marked. In 17 polling stations observed, citizen and international observers were not allowed to examine the ballots upon request”.

Source: OSCE/ODIHR EOM to Azerbaijan, Parliamentary Elections 2013, Final Report, p. 22.

www.osce.org/institutions/110015?download=true

and may inspect all counting documents such as protocols and tally sheets as well as decisions that can affect the outcome (International IDEA 2014a: 250).

This is noted in the OSCE/ODIHR Election Observation Mission’s Final Report on the *2013 Parliamentary Elections in Azerbaijan*.

Recording of results

The results of the count should be correctly recorded in the official results protocol, which should be signed by all authorised persons, that is polling station officials (OSCE 1990a: para. 7.4; OSCE/ODIHR 2003b: 103). Records should not be filled in with pencil since this can be easily erased (Venice Commission 2002: Explanatory Report, para. 47). Recorded figures should be reconciled. All present party or candidate representatives and observers should receive copies of the records (ibid.: para. 46). Once counting is completed and with a view to provide an opportunity for public scrutiny of results, a copy of the records should be posted at the polling station (ibid.).

Transmission of results and transport

After the completion of the counting, the results must be immediately transmitted to the higher-level election commission. This should be done in an open manner, either by fax or through computer networks (Venice Commission 2002: Explanatory Report, para. 51; OSCE/ODIHR 2010: 82). As a safeguard, all polling materials, such as the records, the ballot papers and the ballot box, should be secured and directly transported to the higher-level election commission accompanied by the presiding officer and two polling station officials with differing political preferences (International IDEA 2014a: 251). If elections take place under strict security measures, the transport might also be supervised by the security forces, which are obliged to act impartially (Venice Commission 2002: Explanatory Report, para. 50). Also, observers and party or candidate representatives should be able to track the counting through the various levels up to the finally consolidated results (International IDEA 2014a: 251). This enhances their ability to detect irregularities, thus ensuring respect for the free expression of the electors’ will.

The ballots should be preserved in order to be used as evidence in case of complaints (Committee of Ministers 2004: para. 98). They should be kept in a secure place, at



Inaccuracies in the counting process (Belarus)

The EOM noted that “[b]efore opening ballot boxes, spoiled ballot papers were not counted in 17 per cent of polling stations, the total number of voters in the voters list was not established and announced in 21 per cent of observed counts and the total number of voters who received ballot papers was not established and announced in 23 per cent of cases, as required by the Electoral Code”. Furthermore, it reported “that the count was often conducted in silence and that they [the IEOM members] were not given a meaningful opportunity to observe the count in 36 per cent of polling stations. The results by candidate were not announced in 29 per cent of counts observed. Problems with reconciling results were observed in 76 per cent of polling stations observed during the completion of the protocols. Results were not checked against the control equations in 20 per cent of polling stations observed, figures were not recorded accurately in 13 per cent of cases, and official protocols were pre-signed by PEC members in 11 polling stations [of 125 stations observed]. Protocols from PECs were not immediately submitted to DEC in four cases observed.”

The EOM therefore recommended that “[c]lear, open, and transparent procedures for the count should be established and strictly implemented by the PECs. Consideration should be given to announcing the mark on each ballot and showing it to commission members, observers, and candidate proxies. The tallying of results and completion of results protocols should be conducted in an open manner that provides for meaningful observation of the process.”

Source: OSCE/ODIHR EOM to Belarus, Parliamentary Elections 2012, Final Report, p. 20.

www.osce.org/odihr/elections/98146?download=true

least until election appeals are finally resolved. Additionally, any objections to counting procedures should be recorded and attached to the results sheet (International IDEA 2014a: 251).

Several inaccuracies that occurred during the process of counting are presented in the OSCE/ODIHR Election Observation Mission’s Final Report on the 2012 Parliamentary Elections in Belarus.

Determination of the results of e-voting

There are several ways to determine the results of e-voting. Since technical operations are less visible, clear and transparent procedures are needed to create confidence.

According to the Council of Europe e-voting handbook (2010), if recording devices are employed on-site, counting may be conducted at the polling station (e.g. by printing or storing the results on a separate media device). In case the count is required at a higher level of the EA, the storage device must be transported to the relevant location. After counting, the results may be transmitted via an (encrypted) internet line, which should be protected from any form of manipulative influences, and simultaneously a second means of transmission should be used to verify the results. If two versions of the results exist (such as electronic and printed), they should be transported separately. In order to prevent manipulations, the responsible official should be obliged to transmit the results immediately to the higher level.

Votes cast using the internet need to be counted at a central level. A cast vote might be immediately transmitted to a central electronic ballot box or stored at the polling station and transmitted after the voting is completed.

Useful guidance on e-voting is provided by Recommendation Rec(2004)11 of the Committee of Ministers:

- the e-voting system shall not allow the disclosure of the number of votes cast for any voting option until after the closure of the electronic ballot box;
- any decoding required for the counting of the votes shall be carried out as soon as practicable after the closure of the voting period;
- when counting the votes, representatives of the competent EA shall be able to participate in, and any observers shall be able to observe, the count;
- a record of the counting process of the electronic votes shall be kept, including information about the start and end of the process, and the persons involved in the count;
- there shall be the possibility of a recount. Other features of the e-voting system that may influence the correctness of the results shall be verifiable.

b. Tabulation of results

The tabulation of results is their aggregation after they are reported by polling stations or the EA level above with a view to analysing and portraying them in a clearly arranged manner (International IDEA 2014a: 342). According to Article 14 of the Convention and in line with the principle of secrecy of the vote, tabulation of results should be done in a non-discriminatory way (The Carter Center 2014: 171). Since manipulation and mistakes may occur during tabulation in particular, observers and party or candidate representatives should be allowed to access tabulation facilities and be passed copies of protocols and tabulation sheets (OSCE/ODIHR 2003b: 111; The Carter Center 2014: 170). Additionally, parallel vote tabulation, that is observers collecting results and tabulating them independently, should be allowed to enhance confidence in the process and help assess the credibility of the results (OHCHR 1994: para. 112).

c. Publication of results

The method of publication and the format of results should be mandated by the legal framework. EAs are asked to proactively put information of public interest in the public domain (UN 2003: Article 10). That information comprises election results that must be published in an expeditious manner with sufficient details for each level allowing for examination (OSCE 1990a: para. 7.4; OSCE/ODIHR 2010: 82). Simultaneously, certified results should be handed out to observers (International IDEA 2014a: 250). The results should include the actual number of votes cast, not just percentages. Furthermore, the results should be published disaggregated by polling station to allow traceability and contestability (ibid.: 256), “except in highly exceptional circumstances where identifying the geographical distribution of the results of voting could lead to discrimination, retributions, or other severe adverse action against a local or regional population”



Requirements for the publication of election results (Belarus)

The EOM noted that the CEC published only limited results, not disaggregated by polling station. Because of this, electoral stakeholders could not check the accuracy of the tabulated results. The EOM concluded that this undermined transparency and limited the possibility of submitting complaints.

The EOM noted that “preliminary and final results should be published with a complete breakdown of the vote by district and polling station. Results should not only include the total number of voters and turnout at each polling station, but also the numbers of valid and invalid votes, votes cast for each candidate, votes cast against all candidates, and the number of spoiled ballot papers.”

Source: OSCE/ODIHR EOM to Belarus, Parliamentary Elections 2012, Final Report, p. 21.

www.osce.org/odihr/elections/98146?download=true

(OSCE/ODIHR 2003a: 73). These exceptions must be prescribed by law and open to judicial review.

Depending on the timeframe of their publication, two types of results can be distinguished (Venice Commission 2002: Explanatory Report, para. 50):

- ▶ “provisional” results, which are tabulation snapshots, incomplete and not legally binding, and often aired by the media;
- ▶ “final” results, complete and official results, which may still be appealed.

The continuous reporting of provisional results is particularly sensitive as they could be misleading. Reporting should clearly state that the final results may significantly differ from provisional results (ibid.: para. 51).

The requirements for the publication of results are summarised in the OSCE/ODIHR Election Observation Mission’s Final Report on the Parliamentary Elections in Belarus in 2012.

d. Implementation of results

To respect the results of genuine elections is mandatory for all electoral stakeholders and the international community (UN Human Rights Committee 1981-2014: GC 25, para. 19). However, this does not mean that results are not contestable in case of irregularities. It must be possible to challenge and invalidate questionable election results and to organise recounts or new elections at any or all polling stations in cases of doubt (OHCHR 1994: para. 112; International IDEA 2014a: 251). Hence, judicial review or equivalent processes should be established by law for clearly and unambiguously regulated situations (International IDEA 2014a: 251; UN Human Rights Committee 1981-2014: GC 25, para. 20).

Finally, results must be implemented, that is it must be ensured that candidates who obtained the necessary number of votes are enabled to take office and remain there for the time prescribed by law (OSCE 1990a: para. 7.9). The legal framework must clearly state the electoral formula that is used to convert votes into legislative seats. Protection of the mandate of elected officials does not exclude the possibility of removing elected officials from office under circumstances prescribed by law that must not be discriminatory or arbitrarily applied (International IDEA 2014a: 251).

	Counting and results management (standards and good practices)	OSCE/ODIHR EOM Reference (final reports)
Counting	Counting procedures that are properly outlined yet as simple as is practical should be established by law.	Belarus 2012, p. 20 Ukraine May 2014, p. 27
	Counting should begin immediately after the closing of the vote.	Armenia 2013, p. 21
	Only authorised persons should interfere in or direct the counting process. Polling station officials should be trained and familiar with the voting procedures.	Armenia 2012, p. 22 Azerbaijan 2013, p. 22 Moldova 2014, p. 23
	Reconciliation of votes comprises counting the number of ballots in the box and voters according to the voter lists. Recorded figures should be reconciled.	Belarus 2012, p. 20 Ukraine 2012, p. 29 Ukraine May 2014, p. 29
	Voter lists, unused ballots and envelopes should be packed/cancelled before opening the ballot boxes.	Ukraine 2012, p. 28 Georgia 2013, p. 21
	Counting should be transparent, e.g. it should be announced aloud or all envelopes and ballots should be displayed so that all attendants can comprehend who a ballot has been marked for.	Belarus 2012, p. 20 Armenia 2013, p. 22 Azerbaijan 2013, p. 22 Georgia 2013, p. 21
	Ballot validity should be determined reasonably and in a way regulated by law.	Armenia 2013, p. 22 Ukraine May 2014, p. 27
	There must not be cases of falsification of voter list entries, results or protocols.	Azerbaijan 2013, p. 22 Ukraine Oct. 2014, p. 27
	Results protocols should be signed by the polling officials after their completion.	Azerbaijan 2013, p. 22 Ukraine May 2014, p. 27
	Results protocols should be posted for public scrutiny.	Moldova 2014, p. 23
	Observers should be given copies of results protocols upon request.	Azerbaijan 2013, p. 22

Counting	Election material should be delivered to the EA immediately after the completion of results protocols.	Belarus 2012, p. 20 Azerbaijan 2013, p. 22
	Transfer of results should not be made by one polling station commissioner alone.	Azerbaijan 2013, p. 22
	Election authorities should consider the practical implication of procedures and ensure that the election materials are not damaged during transport.	Ukraine Oct. 2014, p. 28
	Tabulation should take place in an environment free from intimidation.	Ukraine 2012, p. 30 Ukraine Oct. 2014, p. 28
Tabulation	Local authorities could be advised to provide adequate premises for tabulating.	Ukraine May 2014, p. 28
	Procedures should be established that prevent alterations of election results and correction of forms.	Azerbaijan 2013, p. 23 Ukraine Oct. 2014, p. 30
	Election authorities should plan for contingencies in case of malfunction of electronic centralised tabulation systems.	Moldova 2014, p. 23 Ukraine May 2014, p. 28
	Unrestricted access should be given to observers during tabulation.	Ukraine 2012, p. 29 Azerbaijan 2013, p. 22
Publication	Preliminary and final results should be immediately published with a complete breakdown of the vote by polling station to increase transparency.	Armenia 2012, p. 23 Belarus 2012, p. 21 Georgia 2013, p. 20
	Results should include the total number of voters and turnout at each polling station, the numbers of valid and invalid votes, votes cast for each as well as against all candidates, and the number of spoiled ballot papers.	Belarus 2012, p. 21 Ukraine 2012, p. 30
	If high numbers of elected candidates withdraw without taking office, the voters' choice is undermined.	Armenia 2012, p. 23
Implementation	Questionable results should be open to an effective remedy and invalidation.	Ukraine 2012, p. 30 Armenia 2013, p. 24
	The circumstances in which recounts have to be carried out and its procedures should be clearly set by law.	Ukraine 2012, p. 30
	Constitutional courts should not confirm results before the exhaustion of the appeal period and resolution of all open appeals.	Azerbaijan 2013, p. 25

10. ELECTORAL COMPLAINTS

Any failure to comply with electoral law must be open to appeal in order to underscore the legality of the electoral process and give effect to citizens' electoral rights. Consequently, complaints may aim to correct decisions, eliminate violations or invalidate fully or partially election results. The handling of complaints influences the credibility of the electoral process and its results. However, the procedures may vary greatly from country to country – depending on political or historical background – and may range from formal judicial proceedings to more informal dispute resolution mechanisms.

This section deals with possible grounds for complaints and electoral offences, the complainants, the complaint bodies and the complaint procedure.

a. Grounds for complaint and electoral offences

Breaches of the electoral law must be subject to complaints so the law can be effectively implemented (Venice Commission 2002: Explanatory Report, para. 92). Complaints can be related to any stage in the electoral process (International IDEA 2014a: 261), including the electoral system and boundary delimitation, decisions taken by the EA, voter lists, the validity of candidatures, the election campaign or party funding, access to and coverage of the media, as well as irregularities during voting, counting and tabulation or issues with the results themselves. The law should define clearly the grounds on which complaints are permissible (The Carter Center 2014: 174).

Additionally, electoral offences such as electoral fraud, voter intimidation or multiple voting should be investigated and those responsible for the violation, whether individuals, officials or entities, should be held accountable (OSCE/ODIHR 2010: 52; UN Human Rights Committee 1981-2014: GC 31, paras. 8, 15; International IDEA 2014a: 272). Election and party legislation and/or framework legislation (civil and penal codes) should clearly specify election-related offences (by voters, candidates, parties, their representatives/observers, media, electoral and public officials, etc.) and effective, though proportionate, sanctions for such offences (International IDEA 2014a: 272). Sentenced officials should not be reappointed for future elections.⁹

b. Complainants

Complaints must be allowed as broadly as possible. At least each candidate, voter and party registered in the constituency concerned must be entitled to appeal. A reasonable quorum may however be imposed for appeals by voters challenging the election results (Venice Commission 2002: Guidelines, section II.3.3.f). Additionally, CSOs and observers should have the possibility to challenge election-related decisions. It should be clearly regulated who may file a complaint, which must be done non-discriminately, since all people enjoy equal protection by the law (OHCHR 1966: Article 26; The Carter Center 2014: 179). This comprises, in particular, equal access to justice regardless of gender or affiliation to a national minority, as emphasised by Article 14 of the Convention (Council of Europe 2013: Strategic objective 3). Moreover, there must not

9. OSCE/ODIHR EOM to FYROM, Municipal Elections 2005, Final Report, p. 24, available at www.osce.org/odihr/elections/fyrom/15401?download=true, accessed 21 July 2016.

be unreasonably high fees for legal proceedings, as this may prevent people from appealing (UN Human Rights Committee 1981-2014: GC 32, para. 11).

c. Complaint bodies

Electoral complaints should be heard in the first instance either by an electoral commission or a court while it must be possible to make a final appeal to a court that is entitled to examine the substance of the case (OSCE/ODIHR 2010: 51; Venice Commission 2002: Guidelines, section II.3.3.a). Concerning parliamentary elections, there might be the opportunity to file a complaint to the parliament, provided that a judicial review is possible (OHCHR 1966: Article 2(3)(b); Venice Commission 2002: Explanatory Report, para. 94). Any complaint body should be competent and impartial (OHCHR 1966: Article 14(1); OSCE/ODIHR 2010: 51). Courts must be independent from the executive and legislative branch, that is clearly separated, and states must protect judges from political influence on their decision making and establish objective criteria for their independent status (UN Human Rights Committee 1981-2014: GC 32, para. 19). Effectively, any complaint body should be (physically) accessible for all parts of the population, or there should be a procedure in place that allows potential complainants to reach the body.

According to the Code of Good Practice, the powers and responsibilities of the various bodies involved should be clearly regulated by law in a way that avoids conflicting jurisdictions (Venice Commission 2002: Guidelines, section II.3.3.c). This means that:

- neither the complainants nor the authorities should be able to choose the complaint body to avoid parallel complaint procedures, refusals to give a decision or “forum shopping”, that is the choice of a complaint body according to the complainant’s alleged opinion;
- a higher electoral commission must be entitled to correct or annul decisions of a lower electoral commission (hierarchical structure of appeals).

In particular, the complaint body must be entitled to invalidate election results if irregularities have affected them, that is the allocation of mandates. This does not always concern the entire country or a whole constituency, but should be possible at polling station level, with only the vote in the concerned area being repeated (Venice Commission 2002: Explanatory Report, para. 101). However, the Court states in its judgment concerning the case *Kovach v. Ukraine* of 7 February 2008 (below) that respect for the will of the electorate demands the taking into consideration of specific circumstances.

d. Complaint procedure

The complaint procedure should be clearly and unambiguously regulated by law in line with the due process of law (OSCE/ODIHR 2010: 51), that is the following rights must be granted:

- ▶ the right to present evidence in support of the complaint (OSCE/ODIHR 2003b: 49);
- ▶ the right to a public and fair hearing on the complaint (Council of Europe 1950: Article 6(1); OSCE/ODIHR 2003b: 49);

- ▶ the right to impartial and independent proceedings on the complaint (UN Human Rights Committee 1981-2014: GC 32, para. 21; International IDEA 2014a: 261);
- ▶ the right to an effective and speedy remedy that comprises the cessation of ongoing violations, reparations and interim measures (Council of Europe 1950: Article 13; UN Human Rights Committee 1981-2014: GC 31, paras. 15, 16, 19);
- ▶ the publication of the decision and its legal reasoning (Council of Europe 1950: Article 6(1); OSCE/ODIHR 2010: 51).

Annulment of votes (the Court's case law)



Facts: the applicant stood as a candidate in the 2002 parliamentary elections in Ukraine in a single-seat constituency. According to the first results, he had obtained a narrow majority of votes. However, the vote was annulled in four electoral divisions of the constituency on the basis of reports from observers acting on behalf of his main opponent. As a result, this opponent was declared elected for the constituency. The applicant complained about the invalidation of votes, the unfairness of the subsequent recount and the resulting disrespect for the will of the electorate.

Law: the Court stated "doubts as to whether a practice discounting all votes at a polling station at which irregularities have taken place, regardless of the extent of the irregularity and the impact on the outcome of the result in the constituency, can at all be seen as pursuing a legitimate aim". The Court further criticised the fact that no appeal body (inter alia the CEC and the Supreme Court) had discussed the conflict between sections of the domestic election law and the credibility of the different actors. In addition, no body explained why the found breaches "obscured the outcome of the vote ... to such an extent that it became impossible to establish the wishes of voters". The Court concluded "that the decision to annul the vote in four electoral divisions had to be considered as arbitrary and not proportionate to any legitimate aim pleaded by the Government".

Conclusion: violation of Article 3 of Protocol No. 1 (right to free elections).

Source: *Kovach v. Ukraine* (7 February 2008)

[http://hudoc.echr.coe.int/eng?i=001-84959#{"itemid":\["001-84959"\]}](http://hudoc.echr.coe.int/eng?i=001-84959#{)

Non-compliance with some of these guidelines was found in the OSCE/ODIHR Election Observation Mission's Final Report on the 2013 Presidential Election in Azerbaijan (below).

The complaint procedure should be as simple as possible and should not create unnecessarily high formal hurdles (Venice Commission 2002: Guidelines, section II.3.3.b). Special complaint forms and an information campaign may help voters to correctly file their complaints. The complaint procedures "should be clear, transparent and easily understandable" (Venice Commission/OSCE/ODIHR 2006: para. 55).

This was noted by the OSCE/ODIHR Election Observation Mission's Final Report on the 2012 Parliamentary Elections in Belarus (below).

The deadlines for the submission of complaints and subsequent decisions must be short, that is each step should not take more than three to five days at the first instance (Venice Commission 2002: Guidelines, section II.3.3.g). It should be noted that complaint procedures must not retard the electoral process and that if a matter is ready for decision, this must be taken promptly, before the elections rather than afterwards



A complaint procedure in line with the due process of law (Azerbaijan)

The EOM observed that the Baku Court of Appeals rejected without justification several appellants' motions. For instance, appellants contested the invalidation of signatures by the CEC "on the grounds that they 'appeared' to have been falsified ... they argued that the conjecture and speculation of the CEC working group [which examined the signatures] is not sufficient basis for denying registration. ... The Baku Court of Appeals did not address the lawfulness of [this procedure] ... as the basis for the CEC decisions"; rather, the decisions were upheld on the grounds that the candidate did not provide a sufficient number of signatures to be registered.

The EOM recommended consequently that "[a]ll arguments of appellants should be addressed by the courts in hearings and written decisions. In accordance with the law, decisions should include the argumentation of the court, to fully explain the legal basis for the decision. Rejections of appellants' motions to review additional evidence should be clearly grounded in the law and procedural omissions made by the CEC should be addressed upon appeal."

Source: OSCE/ODIHR EOM to Azerbaijan, Presidential Election 2013, Final Report, p. 18.

www.osce.org/institutions/110015?download=true

(Venice Commission 2002: Explanatory Report, para. 95; International IDEA 2014a: 261). However, the periods have to be long enough to allow the complainant to prepare his or her complaint and to exercise defence rights, and they have to reflect the complexity of the matter, its electoral urgency and the nature of the complaint body.



Avoiding inconsistent and formalistic interpretation of the law (Belarus)

The EOM found that the appeals review process was characterised by an inconsistent and formalistic interpretation of the law. For instance, the Supreme Court dismissed a complaint referring to a lack of legal permission to collect information that was presented as evidence.

The report recommended that "[e]lection commissions and courts should refrain from an overly formalistic approach to handling complaints. The law should not be interpreted to adversely limit the basic rights and freedoms as proclaimed by the Constitution and provided in international standards. Election commissions and courts should give thorough and impartial consideration to the substance of all complaints and appeals."

Source: OSCE/ODIHR EOM to Belarus, Parliamentary Elections 2012, Final Report, p. 17.

www.osce.org/odihr/elections/98146?download=true

	Electoral complaints (standards and good practices)	OSCE/ODIHR EOM Reference (final reports)
Grounds for complaint	Complaints and appeals are essential with respect in particular to election results and decisions taken before elections.	Belarus 2012, p. 16
	Electoral offences should be investigated impartially and those responsible should be held accountable.	Armenia 2013, p. 17
	The presumption of innocence also applies to administrative sanctions.	Armenia 2013, p. 19
Complainants	Sanctions should be effective and proportional to the significance of the violation.	Georgia 2012, p. 22
	Standing in appeals must be granted inclusively. At least each candidate, voter and party registered in the constituency concerned must be entitled to appeal.	Ukraine 2012, p. 26
	CSOs and observers should be entitled to appeal.	Armenia 2013, p. 17
Complaint bodies	The powers and responsibilities of appeal bodies should be clearly regulated by law and conflicts of jurisdiction should be avoided.	Moldova 2011, p. 16, 26
		Georgia 2012, p. 21
		Armenia 2013, p. 17
Complaint procedure	The appeal body must have authority over the issues related to the right to vote, eligibility, validity of candidatures, observance of campaign rules and the outcome of elections.	Georgia 2013, p. 18
	Final appeal to a court must be possible.	Belarus 2012, p. 16
		Belarus 2012, p. 16
Complaint procedure	The appeal procedure should be transparent and in line with due process. The rights to present evidence, to a fair and public hearing, to independent and impartial proceedings, to an effective and speedy remedy and to appeal an appellate court must be granted.	Belarus 2012, p. 16
		Ukraine 2012, p. 25
		Azerbaijan 2013, p. 16-18
Remedies must be effective, that is they must impede the violation and if necessary provide appropriate redress.		Moldova 2014, p. 20
		Ukraine Oct. 2014, p. 25
		Moldova 2014, p. 19

<p>Complaint procedure</p>	<p>Timeframes to investigate and prosecute electoral offences should be short and stipulated in law.</p>	<p>Armenia 2013, p. 18 Georgia 2013, p. 19</p>
	<p>Similar cases should be decided consistently.</p>	<p>Moldova 2011, p. 18 Ukraine Oct. 2014, p. 25</p>
	<p>Decisions must be made on a legal basis. They must be publicly provided, including their legal reasoning.</p>	<p>Armenia 2012, p. 19 Belarus 2012, p. 16 Azerbaijan 2013, p. 25 Moldova 2015, p. 19</p>
	<p>The appeal procedure must be simple and free from formalistic hurdles. The provision of complaint forms and information campaigns may help.</p>	<p>Belarus 2012, p. 17 Georgia 2012, p. 21 Armenia 2013, p. 17 Ukraine Oct. 2014, p. 24</p>
	<p>Deadlines for submitting appeals and subsequent decisions must be short (three to five days for each, at the first instance). However, deadlines must allow for a considered decision.</p>	<p>Armenia 2013, p. 17 Azerbaijan 2013, p. 25 Moldova 2014, p. 21 Moldova 2015, p. 20</p>

11. ELECTION OBSERVATION

Election observation is a process that includes the systematic collection of information on all stages of the electoral process, their analysis as well as the reporting of results and consequently the issuing of recommendations. The concept of election observation is based on fundamental human rights such as “the rights to genuine elections, to participate in public affairs, to associate and to seek, receive and impart information in the electoral context”.¹⁰ Election observations are an important means to assess the lawfulness of the electoral process, contributing to an increase of transparency and confidence in the electoral process.

An election observation can be conducted in various forms. However, this section mainly addresses professional observations through the deployment of election observation missions, which is a systematic approach to observation – as distinct from sporadic and isolated observations. Moreover, election observers can be either international or domestic groups (Venice Commission 2002: Explanatory Report, para. 87). This handbook focuses on the role of domestic election observers.

a. Accreditation of observers

The election observation process should be as inclusive as possible and states should encourage election observers to observe elections at each level (Venice Commission 2002: Guidelines, section II.3.2.a; OSCE 1990a: para. 8).

According to the Code of Good Practice, there are two types of domestic election observers (Venice Commission 2002: Explanatory Report, para. 87):

- ▶ non-partisan observers, including observers from domestic CSOs and possibly media representatives (OSCE/ODIHR 2003a: 76);
- ▶ partisan observers, who are often proxies of political parties or candidates.

In practice the distinction between them is not always obvious (Venice Commission 2002: Explanatory Report, para. 87). Unless specific mention is made to either group, the expression “domestic observers” shall include both party and non-partisan observers (Venice Commission 2009: para. 9).

To enable election observers to perform their tasks, a process needs to be put in place for their accreditation. This process should be simple, transparent, timely and guided by objective and reasonable criteria (European Commission 2008: 74; International IDEA 2014a: 155). It should allow for the accreditation of an appropriate number of observers (OHCHR 1994: para. 128) to increase confidence while ensuring it does not lead to overcrowding in places such as polling stations. There should be a timely remedy against the refusal of an accreditation (Council of Europe 1950: Article 13; OHCHR 1966: Article 2(3); International IDEA 2014a: 156).

10. See the Global Network of Domestic Election Monitors (GNDEM), available at www.gndem.org/aboutgndem, accessed 21 July 2016.

b. Purposes and tasks of an election observation mission

A well-structured or well-organised observation of elections may raise the transparency of and the electorate's confidence in the entire electoral process since the presence of accredited election observers allows for public scrutiny and might discourage electoral violations such as fraud or voter intimidation (OSCE/ODIHR 2003a: 76; International IDEA 2014a: 152). Any election observation should aim to assess the compliance with domestic legislation and with international election standards (International IDEA 2014a: 152).

An election observation might provide valid evidence as to whether elections were conducted lawfully and are as such particularly valuable in developing democracies (Venice Commission 2002: Explanatory Report, paras. 86, 89). An accurate observation comprises all aspects and stages of the electoral process before, during and after election day (*ibid.*: Guidelines, section II.3.2.b). Particularly, it should cover:

- ▶ the assessment of the election and election-related legislation;
- ▶ the assessment of whether the authorities and especially the EA maintain an impartial role and if fundamental human rights are granted to contestants and voters;
- ▶ the registration of candidates and voters;
- ▶ the election campaign and media coverage;
- ▶ the distribution and storage of voting material;
- ▶ the processes of voting, counting and tabulation as well as the announcement of results (*ibid.*: Explanatory Report, para. 88);
- ▶ the handling of electoral complaints.

Typical tasks of observers besides mere observation are the conduct of voter education activities, promotion of codes of conduct for contestants and the exercise of parallel vote tabulation (European Commission 2008: 74). The exact extent of election observations should be regulated by law (OSCE 1990a: para. 8).

c. Observers' rights

According to Article 11 of the Convention, observers must be granted the freedom to associate, including the right to form and join a domestic observation organisation. Once observers are accredited, states should recognise them and facilitate their work (The Carter Center 2014: 156). Additionally, the EA should co-operate with election observers, for example by providing them with relevant information, holding joint meetings or implementing corporate voter education activities (European Commission 2008: 74).

Freedom of movement must be guaranteed to observers in all areas where elections occur as well as freedom of access to all steps connected with the electoral process (Venice Commission 2009: Guidelines, sections 1.4, 1.5; International IDEA 2014a: 152). The law should only impose reasonable restrictions and be very clear about the places where observers are not allowed to observe in order to avoid inconsistent interpretations (Venice Commission 2002: Explanatory Report, para. 91; OHCHR 1994: para. 99).



Security of election observers (Belarus)

"The OSCE/ODIHR EOM noted several cases of alleged intimidation of citizen observers. For instance, on 23 August, the vehicle of Yuri Novikov, a local co-ordinator of the For Fair Elections campaign in Mogilev, was searched by the police and observer-training materials were seized. On 24 September, 17 members of the citizen observer group, Election Observation: Theory and Practice, were detained and had their fingerprints taken at a police station in Minsk, although no charges were brought against them."

Source: OSCE/ODIHR EOM to Belarus, Parliamentary Elections 2012, Final Report, p. 18.

www.osce.org/odihr/elections/98146?download=true

Observers must also be granted security of person, that is freedom from physical or mental intimidation and coercion (International IDEA 2014a: 152).

An example of the violation of observers' rights was described in the OSCE/ODIHR Election Observation Mission's Final Report on the 2012 Parliamentary Elections in Belarus.

Moreover, states must grant to observers the freedom of expression that entails the freedom to seek and receive information according to Article 10(1) of the Convention. Specifically, observers should be free during the entire electoral process to contact people (particularly officials, voters, contestants and media representatives), to take notes and report to their organisation (UN 2003: Article 10(a), 13(b); Venice Commission 2002: Explanatory Report, para. 90). They should have full access to necessary documents upon request (Venice Commission 2009: Guidelines, section 1.4, 1.7; UN Human Rights Committee 1981-2014: GC 25, para. 20; CIS 2002: Article 15.8). Observers should be entitled themselves to appeal against the decisions, actions or omissions of the EA (CIS 2002: Article 14.3).

d. Observers' responsibilities

In order to be credible, election observers should adhere to certain obligations. First of all, observers should respect the law and should not obstruct the election process (Venice Commission 2009: Guidelines, section 2; CIS 2002: Article 15.9). Furthermore, observers must not interfere and should be politically impartial while observing (International IDEA 2014a: 151; OSCE 1990a: para. 8).

To make sure that election observers know and understand their rights and duties, they should undergo specific training, as emphasised in the findings of the OSCE/ODIHR Election Observation Mission's Final Report on the 2012 Parliamentary Elections in Georgia (below).

Observers must fulfil their tasks in a non-discriminatory way (International IDEA 2014a: 151). Finally, they are obliged to report on their observation findings accurately and objectively (European Commission 2008: 74; CIS 2002: Article 15.9), with an aim to have their findings, suggestions and recommendations implemented by the authorities, including the EA.



Observers' duty to maintain impartiality (Georgia)

The EOM noted 40 cases of undue influence of authorised people in the processes in polling stations: "party proxies or citizen observers [were] interfering in the voting process or intimidating voters. In several instances civil society observers were openly naming themselves as representatives of a certain candidate or a party or otherwise displaying bias."

The EOM therefore recommended: "Civil society organizations, political parties and candidates should ensure that their representatives and proxies in polling stations receive comprehensive training to ensure respect for provisions prohibiting observer interference in the voting and counting processes and maintain impartiality when carrying out observation."

Source: OSCE/ODIHR EOM to Georgia, Parliamentary Elections 2012, Final Report, p. 24.

www.osce.org/odihr/elections/98399?download=true

	Election observation (standards and good practices)	OSCE/ODIHR EOM Reference (final reports)
Accreditation	National and international observers should be allowed to participate as widely as possible and without hindrance in an election observation.	Belarus 2012, p. 18 Ukraine 2012, p. 24 Azerbaijan 2013, p. 19 Ukraine May 2014, p. 22
	Only reasonable restrictions should apply for the accreditation of observers and legal regulations should be clear and unambiguous.	Armenia 2012, p. 17 Azerbaijan 2013, p. 20
	A mandatory test for domestic election observers that has to be passed to be accredited might be overly restrictive since training of observers is solely the task of their organisation.	Armenia 2012, p. 17, 28
	Overcrowding in a single polling station because of the presence of several observers of one group should be avoided.	Georgia 2013, p. 20
Purposes and tasks	The participation of election observers can enhance the transparency of the electoral process.	Georgia 2012, p. 23
	Observation should not be limited to election day itself and should also comprise election-related events before and after it.	Belarus 2012, p. 18 Georgia 2013, p. 19
Observers’ rights	Election observers should be ensured unhindered access to all parts of the electoral process.	Belarus 2012, p. 18 Azerbaijan 2013, p. 23 Ukraine May 2014, p. 22 Ukraine Oct. 2014, p. 23
	States must ensure the security of observers.	Belarus 2012, p. 18
	Observers should be given copies of the protocols to verify their numbers and allow for effective complaints.	Belarus 2012, p. 18 Ukraine 2012, p. 24
Observers’ responsibilities	Election observers should receive appropriate training on their duties, especially on acting impartially and not interfering.	Georgia 2012, p. 24 Georgia 2013, p. 20
	The withdrawal of an entire election observation organisation should not be possible if only one of its observers violates his or her duties.	Armenia 2013, p. 16
	Findings should be recorded accurately and impartially as well as published in a timely manner.	Armenia 2012, p. 17

Appendices

Appendix 1 – Abbreviations and acronyms

CEC	Central Election Commission
CIS	Commonwealth of Independent States
Court	European Court of Human Rights
CSCE	Conference on Security and Co-operation in Europe
CSO	Civil society organisation
GC	General Comment
GRECO	Group of States against Corruption
EA	Electoral Administration
EMB	Election management body
EOM	Election Observer Mission
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally displaced person
IEOM	International Election Observation Mission
International IDEA	International Institute for Democracy and Electoral Assistance
NGO	Non-governmental organisation
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PEB	Precinct Election Bureau
PEC	Precinct Election Commission
TEC	Territorial Election Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAC	United Nations Convention against Corruption

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At the same time, it may serve as a training tool for long-term and short-term observers and other electoral stakeholders who wish to familiarise themselves with international election standards (government officials, electoral administration, party representatives, judges, lawyers).

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